Barcode : 99999990278630
Title - the law of minerals in ancient india
Author - bagchi,upendra narayan
Language - english
Pages - 361
Publication Year - 0
Barcode EAN.UCC-13
9 999999 027863

THE

LAW OF MINERALS

IN

ANCIENT INDIA.

BY

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The Model Library Ltd

1, Cornwallis Street, Calcutta.

PRINTED BY N. C. SEN THE SAKHA PRESS,
34, MUSSULMANPARA LANE, CALCUTTA.

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PREFACE.

In the following pages an attempt has been made to trace the history of the ownership of mines and the law relating to minerals in India from the earliest times. India was known to the ancient world as a very rich country but it is doubted by some modern savants if India in ancient times ever exploited the rich mineral wealth lying underneath her soil Her extensive commercial undertakings with the civilised countries of both the west and the east are now admitted by all scholars. But one school is of opinion that all this wealth was secured by the Indian community in consequence of a favourable balance of trade ; while a different opinion that in ancient India precious metals like gold and silver and base metals like iron and copper were produced in commercial quantities has been feebly put forward ; I had, therefore, in the first place, to do a good deal of work with a view to show by a study of ancient social institutions of India that minerals occupied an important place in the lives of the people and that there was much reliable evidence in Sanskrit literature of the knowledge of the existence of mines in India and their exploitation.

The first chapter of the work, therefore, has been devoted to the consideration of the importance of minerals in the social and religious life of the Indians and the use of minerals by the kings and Brahmanas alike as measures of punishment and sacerdotal atonement for various sorts of transgressions References have always been given to indicate the sources of information.

The distinction, which was made between the Roman Law and Religion, and in the great codifications of the

West between Law and Religion in general, was ever unknown in India. India always maintained until power passed away from her hands the unity of law religion and ethics. Ritual law cosmogony philosophy practical precepts, rules of law strictly so called by moderners and many other subjects find place in the books of law ; since in theory at least, the Indian mind was trained to regard the life of man as a whole and attempted guidance thereof by the promulgation of appropriate rules of conduct which were as obligatory as the ordinary rules of law are in a modern society Co-ordination of the constituent members of society according to ancient Hindu sages is found in the conception of mutual duties of each member to the others and to the State or King as representing the community which also occupies an important place as a constituent element It is the duty side of life conceived as an entire whole which finds expression in Hindu Jurisprudence ; this being so there is ample ground for holding that rules—whether ritualistic ethical strictly legal or otherwise—are equally imperative and enforceable ones and in that sense true rules of law This conception does not in any way show that the Hindus never rose high enough on the intellectual ladder to conceive of and develop philosophy theology and law as independent sciences In fact the ancient Hindu sharply delimited the conduct side of life from the knowledge side of the mind ; and the Smritis only contain the rules of conduct and *the consequences on* life of their transgression (in this world and in others) together with such minimum information on the sciences as might be really or reasonably necessary for an ordinary citizen who did not want to specialise in any of the many sciences evolved by the Hindu genius Compare the contents of the Code of Manu with

those of the Sānhita of Katayana or Sandilya's Bhakti-Sutra

This being the position of the Smritis in Hindu legal literature what western writers have been pleased to denominate as the "Sacerdotal law or legislation" of the ancient Hindus is truly speaking civil law even in the strictest sense of the Austinian School, for example, take the following passage from the sage Apastamba —

If any persons transgress the order of their spiritual director, he shall take them before the king The king shall consult his domestic priest, who should be learned in the law and in the art of governing He shall order them to perform the proper penance, if they are Brahman and reduce them to reason by forcible means, except corporal punishment and servitude, but men of other castes, the king, after examining their actions, may punish even by death"—Apastamba 11. V 10—13

Indeed, the plain significance of the above text is to place a transgression of a sacerdotal rule of action in the same category with regard to sanction for its violation with the violation of a purely jural rule of action Looked at from this point of view, external rules of conduct whether moral, religious or strictly juristic, whether relating to a man's well-being or his wealth are equally perfect legal rules for which sanction is provided by the Smritis and Sanhitas The Brahmin pontifical jurisprudence is indeed secular in its ultimate analysis and India is singularly free from that baneful competition between the church and the secular princes for extension of jurisdiction which had disfigured the annals of Christendom during many centuries of European history

So that in the first chapter of this work in placing before the reader in chronological order the growth of

the importance of minerals in the social life of Aryan India what I *have really attempted* is to show an aspect of the law relating to minerals which is inconceivable to a modern student trained in the schools of Western scientific Jurisprudence

I have shown that for many a transgression which involved violation of a rule of action alike enjoined by the Brahman and the king the offender had to satisfy the secular as well as the sacerdotal authorities a thief for instance had to atone for the sin and in addition to receive secular punishment from the king

I consider that my estimate of the essential nature of the Smritis considered as legal codes is fundamentally different from the current estimates thereof and I believe that the injunctions of the Smritis are not ideal rules for an ideal Government like those contained in More s Utopia

Since minerals *occupied* such an *important* place in the life of the Aryans one might be tempted to know the way of their acquisition. The view of many savants that all the gold silver copper iron and other minerals used by the Indians were imported from foreign countries, has hitherto obtained currency If this position were sound, there could not possibly have been any occasion for the growth of special legal rules *relating* to minerals So I had to challenge the view and have devoted the second chapter of the book to the consideration of the question of the ancient methods current in India for procuring the precious metals and to a narrative showing the vastness of India s mineral wealth I think we may take it as established that India produced gold silver copper iron and some other metals in abundance from very ancient times so that any other view cannot any longer hold good The mass of ignorance underneath which

India's ancient position as a great exploiter of minerals worked from her mines lay submerged, was so dense that to clear it up and restore her to her undoubted place of honour amongst the great mineral exploiting countries of the ancient world was not an easy nor an unnecessary task.

Now then having got the two positions that (a) The precious metals and base metals in use in India were not all exported from outside, and (b) that there were gold, silver, iron and copper mines in India whose existence was not unknown to the Indians but that these mines were worked and that vast quantities of precious metals were extracted from rich alluvial deposits along river beds of ancient India, the next enquiry to which I was naturally led was as to whether there was any law in ancient India regulating the ownership of mines or the method of production or distribution of mineral products

So far as I know no special research was ever made on the subject of the law relating to minerals and the popular idea on the question of mineral rights in India is generally very vague , the only definite statement we see is a casual mention of this matter by the learned author of the Tagore Law Lectures for 1874-75. I have shewn that the view entertained by Prof. Phillips in his T L L (p p 217) is erroneous and one of my objects has been to rescue the Indian mind from the consequences of this careless assertion which has remained unchallenged for so many years

In the third chapter I have considered the general principles underlying the regulation of the right to minerals and have discussed the question with reference to several well-known systems of western Jurisprudence with a view to understand certain texts of Manu, Vishnu

and other Smriti writers which apparently show that the ownership of underground minerals belonged to the king as against the subject I have discussed those texts at considerable length and have shown that those slokas are quite ambiguous and may lend themselves to constructions which might equally support the ownership of the mines as belonging to the sovereign or the subject ; some of those texts may not refer to minerals at all even though the term *Akara* has been used in them ; I have shown that no definite conclusion can be made as to the ownership of mines on the basis of those texts of Manu, Vishnu and other sages although a text of Manu (Ch VIII sloka 39) evidently makes the king lord of the *Bhumi* and as such gives him the ownership of minerals. This sloka distinctly raises the question of the juristic conception of land in Hindu Jurisprudence ; for to make the owner of *Bhumi* also the owner of the minerals underneath the surface is possible only if land is conceived as including both the surface and the subsoil. Some recent decisions of the Privy Council have proceeded upon the assumption that the Indian conception of land did not embrace within its range the subsoil or the underground but was limited to the surface only and grants of land which deliberately and definitely transferred the *dar-bast hak haquk* were interpreted as giving up rights to the surface of the earth only (See 23 C W N p 914 ; 21 C W N p. 377 ; 44 I.A. p. 246 and other cases)

I think I have been successful in establishing the position from ancient texts that in India the juristic conception of land was practically similar to the conception of land with which we have been made familiar in the definition of Coke. If what I have endeavoured to establish meets with the approval of the learned in law

I believe it is time that the Privy Council rulings cases call for a reconsideration by that august tribunal itself or that the enactment of a statute be undertaken to nullify their effect.

Having shown that no definite conclusion can be based on the slokas of Manu, Vishnu etc in my third chapter it was incumbent upon me to see if there was any ancient common rule in India as to the share which was payable to the king out of the produce of the mines either as tax or as royalty.

The fifth chapter of the work is devoted to a consideration of this question. The discussion centred round the text of Manu "अर्धभाग रक्षणाद्राजा भूमेरधिपतिर्हि स;" and I have shown the significance of the indefinite *Ardha-bhaga* in the sloka of Manu upon a comparison of texts which clearly allow the king only 2.p c on the mineral produce; it will be seen from my investigations that the kings were never owners of either land or minerals in ancient India and in regard to mineral produce the king was, under the ancient common law of India, entitled to realise a 2. p, c. as revenue from the subject. The ancient law in regard to minerals which merely allowed 2 p.c, to the sovereign is strikingly different from the law on the subject as we find in the pages of the extant Artha-shastra of Kautilya I have been able to show that the rules found in the work of Kautilya were modelled on the Greek rules on the law of mines, if we are to suppose with Jacobi that the extant work was entirely composed by the individual Kautilya or Chanakya, the prime-minister of Chandra Gupta. I have devoted a long Chapter to the Artha-Shastra of Kautilya with a view to ascertain if the the extant treatise was entirely composed by Chanakya and if the law relating to mineral rights found therein could have been promulgated in the 4th century B C. and

though I have adopted the view of Keith I think I have been able to place evidence before the reader for the first time from which it will no longer be possible to maintain either the view of Jacobi or that of Jolly or Stein as to the origin and growth of the extant Artha Shastra. I believe that I have been able to show that the Kautilian law of mines must have been evolved in the Political School of Kautilya about the same time when the Great Revival of the Gupta period took place and that the king was not the owner of either land or mines till long after the generally accepted date of Kautilya; but to make a complete reply to the position of Kautilya it was necessary to show that not only was the *king* not the owner of the mines but that the ownership of land which according to Hindu Jurisprudence included the soil beneath was not his till some centuries later This is the subject of the 7th chapter of the work.

The view I have put forward on the ownership of land in ancient India is an original one and is consistent with a scientific reading of the evolution of the complex Indian civilisation but the special feature of my treatment of the history of the ownership of land in India is the method of investigation which I have adopted—a method which, instead of ignoring the pre-Aryan materials for a re-construction of Indian political social or legal history tries to trace the origin, growth and maturity of any existing institution *from a pre-Aryan base as modified* by the increasing force of the Aryanising process; the more the Aryanising process has advanced, the more has the native institution coming down from pre-Aryan days been transformed into an altogether different institution which very often impeded the vision of the investigator who basing his researches upon Sanskritic materials only placed himself under a *fatal self-denying* ordinance and

consequently failed to discover its origin, or explain its growth. Pursuing the method above described I have established the position that the Aryans on their arrival in India found a system of land-tenure in existence which attributed the ownership of land to the people and they had to adopt this fact as the basis of their politico-legal system and what they did was to adopt the line of least resistance, recognise the people's ownership of land and to impose some tax on the produce of the land which was always payable to the sovereign even under the existing system in India before the Aryan advent. This system was in existence in India till the great Hindu Renaissance of the 4th century A.D when for the first time in Indian History, the State ownership of land and mines was adopted as a normal consequence of the theory of the Divine Right of kings The Gupta Revival considered as a politico-social revolution is an event more importan in its consequence than any single fact of Indian history, ancient or modern. I have studied this event as ushering in the conception of the Theocratic Sovereignty in India and leading to a re-adjustment of all social, political, and legal institutions which rejuvenated the enfeebled body politic in India and which gave us modern Hinduism and the Smritis in their extant form with the Divine Right of kings, the new Varnasrama-Dharma as the social cement, the religio-political supremacy of the Brahmin and the conception of the State-ownership of the land comprised in the kingdom including the mines beneath In the last chapter I have shown, from a historical study of the systems actully obtaining in independent Indian states, that since the Revival of the fourth century A. D. the kings in India were regarded as owners of the land and mines and the people ceased to own them. This system continues even today

perplexing situation. I think if the knotty problem of the reception of Roman law in various European countries be studied with the help of Anthropology, we shall be able to know the true reason of the difference in the reception of Roman law in different European countries.

I have shown the fallacy of deriving the origin and growth of Indian social, political and legal institutions from purely Sanskritistic sources and have been able to show the true nature of the so-called Aryan conquest of India and thus might claim to have considerably cleared up the path of future workers in the allied fields of Indian political, social or legal history.

From the statements made above, it will be seen that the method of investigation adopted in this work is a new one and has not yet received any recognition from workers in the field. Vincent Smith in his Early History of India only noticed the possibility of constructing the story of Indian history from a study of the continent of India south of the Vindays as the starting point only to reject the idea as being yet incapable of actual realisation The pursuit of a method rejected by the great historian was rather a step which the present writer would have hesitated before taking unless he were sensibly pressed by the magnificence of the results achievable therefrom. I have entirely adopted the above method in my chapter on the History of Ownership of Land in India , the result obtained, it will be seen, does not agree with the theories which now divide learned opinion on the problem. I may claim to have shown that it is possible to commence researches on the origin and growth of ancient Indian institutions by adopting this "discredited" method and to obtain results which appear to me to satisfactorily explain the divergence observable in Indian institutions

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[illegible] of Smith's Early History)

I may also claim to have rescued from oblivion one important phase of Indian civilisation and removed fundamental misconceptions with regard to the extensive mineral wealth of ancient India and its exploitation. I have further placed the law relating to minerals in ancient India in its proper historical setting

The author's indebtedness to writers living and dead is very great and he feels he cannot adequately express his gratefulness to them.

THE LAW OF MINERALS IN ANCIENT INDIA

THE IMPORTANCE OF MINERALS IN ANCIENT INDIAN SOCIAL LIFE.

CHAPTER 1.

With the rapid strides that India has in recent years taken towards becoming one of the few great mineral-wealth producing countries of the modern world and with the discovery of vast sources of mineral-wealth still awaiting the touch of commercial development, the question of the ownership of minerals under the soil has assumed such an importance as might suffice for an excuse for taking up the subject The question has not, in spite of the recent decisions of the Judicial Committee of the Privy Council in cases which went up from the Provinces of Lower Bengal[1], lost its allurement for the

1 See 39 Cal p 696 , 43 Cal. 585 and other cases

theoretical as well as the practical student of Law To the student of the science of wealth the self-same question cannot possibly fail to appeal from the point of view of the distribution of the income arising from the products of the Indian mines Under the insistent economic stress through which the Government of the country has been passing in recent years, proposal for taxing the produce of the mines has emerged at least from one of the Provincial Governments

But a proper understanding and management of the problems which the mineral wealth of the country has raised require a farther study of the question of the ownership of the underground minerals and an adjustment of the diverse claims of rival claimants based upon a judicious review of all available materials.

The paucity of materials for a reasonably certain apprehension of the rules regulating the relations between the sovereign and the different grades of persons enjoying the benefits arising out of the soil has always stood in the way of enquirers who had ever taken up the question The familiar feature of the administrative machinery of the law of modern times we seek in vain in ancient

India ; such descriptions of the Courts of Law as we find in the Smriti works are too general to satisfy a rational spirit of enquiry. On the contrary, they stimulate an eager desire for further research into the details of the system in actual work. But the idea of a Court of record, or even the desire of keeping some sort of written evidence of the litigation disposed of by the Courts was perhaps foreign to the culture of the ancient Hindus and in the absence of this sure material for the reconstruction of the legal system, speculation has always had an ample scope in all attempted presentations of the legal system of ancient India.

Record of the judicial works of Courts we do not possess ; all the knowledge on the subject which a student might expect to obtain may be supposed to be recovered from the Smritis and the commentaries ; but, on the present topic the contribution of these works is significantly small ; the reason for the neglect of the ownership of minerals in these works one might apparently attribute to the comparatively recent acquisition of importance of the problem of the ownership of minerals in the Indian culture-world But for the entertainment of even such a speculative satisfaction grounds are of the most insecure nature.

The highest form of wealth in the Indian continent as also in ancient Egypt has always consisted in the agricultural produce of the land , in fact, agriculture has always formed the life-sustaining occupation of *the main body of the Indian people from* very ancient times The question of land-holding, therefore, must always have loomed large before the gaze of the ancient Sanskrit authors *Yet the space* which the ancient authors allowed to this all-important question of land tenure is surprisingly small In the Smriti of Manu, for instance we find only casual mention of rights in land No solution of conflicting claims has been attempted in the light of a general theory of the ownership of land Out of the stray references to be found in the ancient Sanskrit texts—commencing from the Vedas down to the writings of the authors of the most recent Smritis and Nibandhas—two conflicting theories of the ownership of land emerge —

(*a*) The King had the absolute property in the Soil

(*b*) The Proprietorship of the soil belonged to the cultivator thereof[1]

When the ancient Sanskrit writers do

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1 See 21 C. L J notes Pp 1—2.

not speak with any very certain voice on the question of land-tenure, it is idle to expect from their writing any definite solution of the problem of ownership of the minerals underground. Should a writer on the topic of the ownership of minerals consider himself justified in holding from the above circumstance that in ancient Indian culture the place occupied by minerals as a contributing factor must have been really insignificant, he will surely go wrong. Ancient and mediaeval Sanskrit literature is abundantly full of evidence which clearly establishes the use of ornaments and of handicrafts and utensils made of metals by the inhabitants of ancient India Descriptions of the decorative art of the human person which we meet with in that literature show that the use of ornaments made of metals was a common practice for beautifying the bodies not only of women but of men also. The ancient Epics of India are replete with passages which establish the prevalence of the same practice amongst the people.

Do we find that references to metals are absent from those works which are considered by moderns to embody the rules of conduct, social, moral and legal as well, which were enjoined by the Sages as of

eternal authority and which, according to the view of the Indian students of these ancient times, were actually in regular use and observance by the people ?

Even a cursory study of the Smritis and Sanhitas cannot but fail to show how immensely useful a position metals had come to occupy in the life of the ancient Indians and at the same time one cannot fail to express a feeling of wonder at the silence or at best the equivocal sayings of the authors of these works on the all *important* question of the ownership of these metals before they have been worked *up for commercial transactions from* the cruder state of under-ground ores Indeed, there is no denial of the fact of great commercial importance of precious metals in ancient Indian civilisation and the general rules of contract sale, purchase etc which are found in the Smriti and also partially in the Sanhita works are amply sufficient to regulate such transactions One might, therefore, say that the metals have all been imported from outside the Indian Continent in exchange for the finished products of Indian origin and at the first impression, regard being had to the nature of the ever increasing volume (1) of

1 Hall's History of the Near East—pp. 173—174

evidence of the external trade relations of India with Mesopotamia, Babylon, Syria, Egypt, Rome, Greece and Persia on the West and China Burma, Indo-Malayan Peninsula and the Archipelago on the East, one might be led to the position that it was evidently for the circumstances of Indian ores having never been mined into a commercial state that there was no necessity for any rule for the determination of the question of ownership of underground minerals We shall show later on that in the face of archæological evidence of past working in the mines located in India, this position is hardly tenable

Let us confine our attention to the literature of ancient India to see if we can get hold of any evidence about metals common or precious, or other minerals and any legal rules relating to them.

Whatever may be the age of the Rig-Veda, it is undoubtedly the most ancient record of Aryan Indian life and a cursory search has shown that gold, silver, iron and bell-metal were some of the minerals well known to the Aryans of the Rig-Vedic age[1]

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(1) See on this question pp 110-118 Cambridge History of India, Vol 1

We find that a Vedic Rishi invokes the Sun God in the following terms –

I invoke the golden armed Sun God for protection,[1] and another seer describes that the God Barun covers his plump body with armour made of gold[2], and we see *the worshippers praise Indra for the gift* of golden chariot and invoke the God *to fill their houses with cows and gold*[3] Reference may be made to numerous other passages in the Vedas where mention is made of gold either as descriptive of a God or *as an object of desire*[4], *golden ships of* Pushan are mentioned in the Rig Veda[5], in connection with implements of war, we find numerous references to gold, mention is frequently made of golden coloured mail[6], helmets of gold[7], spears and weapons bright with gold We find in the Rig Veda that the Rishis acknowledge with gratitude the gift of gold pieces[8], gold currency perhaps came into existence, but the question is yet

1 Rig 1 22-5
2 1 25-13.
3 Rig 1-30-16-17
4 See Rig 1 42 6, 1 43 6 1 66-1 1-86-9 1-88-5 1-93-8, 2 34-2 4 2-8, 5-19-8, 8-47 14 where the mention of a goldsmith is made
5 Rig VI 58
6 Rig IV 53-2
7 Rig II 34-3
8 Rig 52 6.

unsettled, in a list of articles, we find mention is made of ten lumps of gold; there are passages in the Vedas which clearly show that the Vedic Aryans knew the use of iron and silver;—[1] we find that Indra has been described as having held an iron thunder in his hands, and[2] we find the chariot of the Maruts described as golden-wheeled and iron-spiked.

The *Brahman* literature of the post-Vedic age contains abundant evidence of the uses of minerals like gold and silver in that age In the Aitareya Brahman,[3] we find that after his Maha-Abhiseka, a Kshatriya is directed to make a gift of one thousand gold-pieces, land and four-footed animals to the initiating priest (Brahmin). Afterwards the priest places on the hand of the intiated Kshatriya a vessel of bell-metal filled with wine.

A similar reference to a drinking vessel of bell-metal is made in the description of the rituals of the Rajasuya Yajna.[4]

In one passage of the Aitareya Brahman we find a description as to how the Asuras

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1 1 52-8.

2 1-88-5,

3 8th Panchika, 39th Chapter, 6th part.

4 8th Panthika, 37th Chapter—4th part of the Aitareya Brahman

We find that a Vedic Rishi invokes the Sun God in the following terms —

I invoke the golden armed Sun God for protection,[1] and another seer describes that *the God Barun covers his plump body* with armour made of gold[2], and we see the worshippers praise Indra for the gift of golden chariot and invoke the God to fill their houses with cows and gold[3] Reference may be made to numerous other passages in the Vedas where mention is made of gold either as descriptive of a God or as an object of desire[4], golden ships of Pushan are mentioned in the Rig Veda[5], in connection with implements of war, we find numerous references to gold, mention is frequently made of golden coloured mail[6] helmets *of gold*[7], *spears and* weapons bright with gold We find in the Rig Veda that the Rishis acknowledge with gratitude the gift of gold pieces[8], gold currency perhaps *came into existence*, but the question is yet

1 Rig 1 92-5

2 1 25-13.

3 Rig 1-30-16-17

4 See Rig 1 42 6, 1 43 5 1 56-1 1-85-9 1-88-5, 1-13-8 2-31-3 4-2-8, 5-19-3, 8-47 14, where the mention of a goldsmith is made.

5 Rig VI 58

6 Rig IV 58-2

7 Rig II 34-3

8 Rig 52 6.

unsettled, in a list of articles, we find mention is made of ten lumps of gold; there are passages in the Vedas which clearly show that the Vedic Aryans knew the use of iron and silver;—[1] we find that Indra has been described as having held an iron thunder in his hands, and[2] we find the chariot of the Maruts described as golden-wheeled and iron-spiked.

The *Brahman* literature of the post-Vedic age contains abundant evidence of the uses of minerals like gold and silver in that age. In the Aitareya Brahman,[3] we find that after his Maha-Abhiseka, a Kshatriya is directed to make a gift of one thousand gold-pieces, land and four-footed animals to the initiating priest (Brahmin). Afterwards the priest places on the hand of the intiated Kshatriya a vessel of bell-metal filled with wine.

A similar reference to a drinking vessel of bell-metal is made in the description of the rituals of the Rajasuya Yajna.[4]

In one passage of the Aitareya Brahman we find a description as to how the Asuras

1 1-52-8.

2 1-88 5,

3 8th Panchika, 89th Chapter, 6th part,

4 8th Panthika, 37th Chapter—4th part of the Aitareya Brahman.

once upon a time surrounded the Bhu loka with iron walls, the Antariska with silver-walls and the Dyu-loka with gold-walls as if these worlds were fortresses[1]

Reference is also made[2] to gold worn by Asuras on their bodies and to golden Kusa grass or Pabitra[3] and to golden asana[4] in the Aitareya Brahmin and we find that an expiation for the loss of gold is sanctioned[5]

In the Sata patha Brahman,[6] we see that the Adhawaryu is required to procure gold and immediately follows a theory of the origin of gold and it is mentioned that people get gold in water

In subsequent literature also a similar theory of the origin of gold is found[7]

Gold is required by an Adhawaryu in similar circumstances[8]

We see the Rig-Veda makes mention of *Rukmini* which means an ornament of gold[9],

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1 1 Pan. 5th Chapter 4th part.

2 4th Pan. 16th Chapter 6th part.

3 8th Pan. 38th Chapter 2nd part.

4 1-5-4 of the Aitareya Brahmana.

5 7th Pan. 62nd Chapter 8th part

6 2nd Kanda 1st Pan. 1st Brahmana.

7 (See Brahma—Baibarta Puran—Krishnajanma Khanda Chapter 161 slokas 82—87; Baman Puran, 64—65 Chapters; Mahabharat, Anusasana Parba 84—85 Chapters).

8 Tattiriya Sanhita 1 1-8-5 and Apastambha Srauti 5-1 5 see also Chandogya—Upanisad 4th Prapathaka 17th Khanda.

9 (IV 10-5; V-58-4 1 166 10).

the term *Mani* also occurs in the Vedic literature and[1] the texts seem to indicate by the term *Mani* an amulet to be worn as a protection against evil ; *Mani* may be either pearl or diamond. The Atharva Veda also directs gold to be given as Daskhina[2] ; the Satha-Patha Brahman enjoins the house holder to offer gold as Daskhina [3]

In the period represented by the later Sanhitas, Brahmins and Upanisads there was a great development of both agriculture and industry ; large and heavy ploughs, evidently made of iron, were used which had sharp points and smooth handles. Sub-divisions of occupations in connexion with the industrial life of this age include makers of jewels, workers in gold, smelters, and smiths.

The advance of civilisation is witnessed in the more extended knowledge of the metals in the period covered by the later Sanhitas[4] We see that *Ayas* might mean either bronze or iron,[5] , and copper and the metals hiranya (gold), shyama, loha, lead (sisa), tin (traupu)

1 Rig Veda 1-29-1, 11-4-1 & 2, VIII-5 1, Aitareya Brahman IV-6, and Kathaka Sanhita XXXV-15 ,

2 9 5-14 ,

3 (IV-3-47)

4 (see P 137 of Cambridge Hist of India Vol 1)

5 (*Macdonell & Keith*, Index, Vol 1 p, 31 & 32).

are some of the minerals known to the Indians of this age

It is clear from the above references which are but a few out of the many that might be found in the Vedic literature that *gold found a very important* place even in the rituals of the Vedic Aryans whose most important concern in life appears to have been the performance of sacrifices in honour of the Gods We also see that the instinctive curiosity of the Vedic Indians did not rest contented without submitting a theory of the origin of the most precious of these metals then known to them The orgin of gold of which the account I have quoted may be deemed to be absurdly fanciful to a modern chemist, yet the account I think cannot fail to be interesting to a modern student since we are supplied with the very profitable information that the people of those days used to gather *gold from* the waters, I believe, of the rivers abounding in the country where they lived I shall show later on how this fact eminently tallies with the result of researches of modern geologists as to the primitive methods of procuring gold in ancient India

Let us now devote ourselves to such evidence on this subject as may be gathered from the next great source of Indian

culture-history—I mean the Buddhist literature of the period preceding the redaction of the ancient Smriti literature which shall claim our more particular attention.

The Jataka literature has abundant references to metals and guilds of metal-workers ; the Karmara was the general crafts-man in metals ; stone-masons used to quarry and shape stones. Buddhist literature reveals a remarkable localisation of industries and corporate regulation of industrial life. There were certain localities where metal-work industries, like wood and pottery work industries, were located. The importance of metal-work localities may be judged from the fact that in metal-working villages there were 1000 families[1] ; The importance of metal-workers might be inferred also from the fact that, amongst the eighteen guilds mentioned in the Jataka, the guild of smiths occupies a prominent position and even ministers were selected from the heads of such guilds[2]

The *Jataka* stories reveal a very active commercial development in India and trade was carried on by over-land route and sea-route alike Indications of commercial relations with Babylon or Baveru are also

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1 (see P 864 J R A S 1901)
2 (see P 165 J R. A S 1901),

is usual[1] The Jatakas also give instances indicative of the luxury of the kings

In Bhojajanya Jataka, a king is seen taking his food in a golden dish[2], another king spends a fortune on a dish[3]

Therefore, it is also evident that in the post-Vedic ages the use of metals was very wide-spread amongst the Indians both for secular as well as for religious purposes like their use in the age of the Vedas

The Greek notices of India commencing from the days long anterior to the time of the invasion of Alexander the Great also furnish conclusive evidence of the variety of uses to which the metals were applied by the Indians

Pliny mentions six varieties of Indian diamonds, pearls and beryls The people were so much in the habit of using these precious stones that artificial stones were prepared in ancient India[4] India, according to the ancient Greeks was the mother of precious stones,[5] and also of gold[6]

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1 (Jataka vi. 485.)
2 (Jataka No 23)
3 (Jataka No 260).
4 (Pliny quoted in M, Crindle s Ancient India—P 129 & 130)
5 (See M Crindle s Ancient India—P 131)
6 (Cambridge History of India vol. 1 P 403).

Megasthenes says that Indians wear dresses worked in gold and adorned with precious stones The Indians used copper which has been fused but not wrought. Megasthenes mentions that rich Indians used gold dishes on which their rice was served. We have seen how the Jataka corroborates the Greek ambassador on this point.

Strabo says that Greek historians in their description of Indian festivals allude to the profuse use of gold and silver and precious stones. "Thus in their processions at their festivals, many elephants adorned with gold and silver are in the train, as well as four-horsed chariots and yokes of oxen Then comes a great host of attendants in their holiday attire with vessels of gold, such as, large basins and goblets, six feet in breadth, tables, chairs of state, drinking cups, lavers, all made of Indian copper, set many of them with precious stones, emeralds, beryls and Indian garments embroidered and interwoven with gold[1]".

The Aorsi wore gold in their dress in consequence of their wealth[2].

These stray references collected from Greek sources bear abundant evidence to the wealth of India. These references also

1 (P 75 M Crindle's Ancient India).

2 (P. 99 of M. Crindle's Ancient India)

show how thoroughly the use of metals penetrated into the secular life of the ancient Indians

The next literary documents to which I shall refer in great detail form the vast mass of the Smriti literature of India.

I shall take up only a few of the Smritis and Sanhitas and I hope to show from the references contained in them the nature of the uses of metals in the Vedic society and in the society governed by the rules of the Smritis—uses, which in some instances became inevitable

Amongst the articles which a student is enjoined by Manu to offer to the Guru upon finishing his studies in the house of the preceptor we find mention of gold——

'A plot of land, gold, a cow, a horse, an umbrella, a pair of shoes, paddy, vegetable, clothes or whatever he is capable of giving him, with that he shall evoke the pleasure of the preceptor[1]

A student is enjoined to acquire auspicious knowledge even from a Sudra and highest virtue even from a man of vile caste and good wife even from a bad family, and immediately after follows this Sloka —

"Ambrosia may be taken even out of poison, a good word even from an infant, a

1 Manu, Ch. 2—Sloka 246.

good conduct even from an enemy and gold even from an unhallowed person[1]".

While speaking of the paraphernalia of a *snatka* Brahmin, Manu declares·—Let him carry a bamboo stick in his hand, and his ewer full of water, his Veda, and the holy thread, and wear a pair of beautiful *golden ear-rings*[2]".

Further on in the same chapter amongst the positive and negative injunctions as regards the *Achara* to be observed by a *Snataka* Brahmana, we find "He shall never wash his feet in a vessel of white brass[3]".

Manu ordains that a Brahmin who steals gold should not be invited on the occasion of a Sradha[4]

In speaking of the regulations of the Shastras as regurds the acceptance of gifts by a Brahmin, Manu says —

"Gifts of gold, ... made to an ignorant Brahmin. are consumed like wood cast in the fire[5]"

"The life-duration of an ignorant Brahmin suffers if he accepts a gift of gold or food grains[6]"

1 Manu, Ch. 2 Sls 238 & 239
2 Manu, Ch 3 Sl 36
3 Manu, Ch 3 Sl 65.
4 Manu, Ch 3 Sl 150
5 Manu, Ch IV, Sl 188
6 Maun, Ch IV, Sl 189,

When ordaining on the propriety of the food to be consumed by a Bramhin, Manu prohibits food offered by a gold stealer[1], a little below in the same Chapter, he prohibits a Brhamin from taking the food from certain castes, he says —

"Nor that of a Blacksmith, nor that of the Nishad, nor that of a Stage-manager, nor that of a Gold-smith, nor that of one who manufactures bamboo articles, nor that of one who sells weapons', and the reason for the prohibition is stated to be the imparing of vitality if a Brahmin takes food given by a gold smith[2]

Manu encourages gifts of gold to the Brahmin and says —" a giver of gold obtains longevity, a giver of houses gets houses, a giver of silver obtains silver in return[3]

After giving instructions of the noblest kind for the purification of mind, in his fifth Chapter, the great sage speaks of the various ways of purifying things and in the very place mentions the method of cleansing metals —

"Silver, gold and other metals, emeralds and other gems, and all things made of

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1 Manu, Ch. IV Sl. 210.
2 Manu, Ch. IV Sl. 250
3 Manu, Ch. IV Sl 233.

stone are according to the sayings of the learned, so far as possible, to be cleansed by ash, earth and water[1]"

And in a subsequent sloka starts a theory of the origin of silver and gold in fire and water ; the reason for the purification of silver and gold by fire and water is found in the fact that the original elements of these metals are fire and water ressectively.

In his seventh Chapter while laying down the rules of *Raja-Dharma* (duties of the king), the law-giver thus ordains :—

"To the King is due the fiftieth part of gold, silver, animals, gems, and having regard to the fertility of the soil and the cost of cultivation, a sixth, an eighth or a twelfth part of paddy and other crop[2]"

And in the same Capter, he advises a conquering King to worship the Devatas and Brahmins of the conquered country by making presents of land and valuable things like gold[3].

Manu devotes the eighth Chapter of the Institutes to *Byavahar* which closely approaches law in the most modern sense of that term and in this Chapter occur some very

1 Manu, Ch. 5, Sl 111
2 Manu, Ch VII, Sl 130
3 See Manu, Ch. VII, Sl 201

important passages which might be expected to furnish us with some rules on the question whose answer we are in search of

I quote the English renderings of the passages in full —When a learned Brahmana has found treasure deposited in former (times), he may take even the whole (of it), for he is master of every thing[1]

When the king finds treasure of old concealed in the ground, let him give one half to Brahmans and place the other half in his treasury[2]

The King obtains one-half of ancient hoards and metals (found) in the ground, by reason of (his giving, protection, (and) because he is the lord of the soil[3]

Special provision has been made by the sage for the share of the king in times of distress —(viz) from Vaisyas one-eighth as the tax on grain, one-twentieth (on the profits on gold and cattle), which amount at least to one *karshapana* , Sudras, artisans and mechanics shall benefit the king by working for him[4]

These passages lay down the law of *Theasarus* as conceived in Indian Jurisprudence and also possibly provide that

1 Manu, Ch. VIII, Sl. 37

2 Manu, Ch. VIII, Sl. 38.

3 Manu, Ch. VIII, Sl. 39

4 Manu, Ch. X, Sl 120.

the King shall obtain *Ardha bhag* of minerals raised from the mines at the pits' mouth

Then lower down in the same chapter in several verses, the great Jurist states the peculiar measures for gold, silver, and copper with a view to introduce the system of pecuniary punishments called by the name of *Sahasa Niska, karshapan etc*[1].

While setting forth the law relating to deposits, we find that the sage says, "He who does not return a deposit, and who demands a deposit without making any—shall be punished by the King as one who has stolen gold and other metals......[2]" and continues that the best evidence of deposit of gold made in the presence of a witness is the deposition of the said witness.

The portion of the eighth Chapter which deals with the punishment for various offences provides for a very severe punishment for the crime of stealing gold. The criminal is directed to run to the King, with clubs in his hand and hair dishevelled, and to openly confess his guilt and seek punishment at the royal hand. The King is in duty bound to use the club for

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1 Manu, Sls. 131 & 138 of Ch VIII.

2 Manu, Ch. VIII, Sl 191

punishing the offender[1] Fine is directed *to* be realised in several cases in gold[2], also in silver[3], fine in copper is directed to be levied also[4], and the worker in gold who defrauds the King is *to* be chopped *to* pieces with a knife[5]

I have collected some Slokas only, there are many other slokas in Manu where punishment takes the shape of fine payable in copper, silver, or gold

In Manu s time *Chandalas* used to wear ornaments made of iron[6] A Gold thief is punished by having deformed nails Manu ordains that a person who associates with a criminal who has stolen a Brahmin s gold becomes guilty of a *Maha pataka*[8] Theft of silver is an offence of the same category with the theft of gold

Mines were worked in India in Manu s time, for, it is said, that even if a Brahmin works in a mine of gold by the order of the King he becomes guilty of an *Upapataka*, while theft of copper and iron also is an *Upapataka*[9]

1 Manu, Ch VIII, Sl. 314, 315, 316
2 See Manu, Ch. VIII Sls. 319 320 321
3 See Manu, Ch. VIII Sl 330
4 See Manu, Ch IX Sl 282
5 Manu, Ch. X, 292
6 Manu, Ch. X, Sls. 51 52
7 Manu, Ch. XI Sl. 49
8 Manu, Ch. X Sl. 55
9 Manu, Ch. XI Sls 60 67

Manu ordains that by the gift of an iron rod sufficient atonement is made for the sin of killing a snake and one *masha* of lead with a bundle of straw removes the sin of killing a eunuch[1], the killing of a camel is atoned for by the gift of a *rati* of gold. Broken grains of rice is to be taken for 12 days in atonement for the sin of stealing gems, pearls, coral, copper, silver, iron, bell-metal and stones[2]

After minutely describing the secular punishment as also the sacerdotal atonement for the sin of stealing minerals in this world and in this life, Manu says that a Brahmin who steals gold is to take one thousand births as snakes, crocodiles, etc.

Let us then turn to Yajnabalkya. This great sage is more systematic in his exposition of the law and has divided his treatise into three separate books dealing respectively with *Achara* (conduct), *Byabahar* (secular law) and *Prayaschitta* (expiation). In the Byabahara chapter of the code, he lays down some rules for regulating the division of treasure-trove, closely approaching in nature the rules laid down by Manu in Chapter VIII, verses 37—39.

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1 Manu, Ch XI Sl 133

2 Manu, Ch XI, Sl 161

He ordains —"If the King comes by a hidden treasure, he must give half of it to a Brahmin. But then, if a learned Brahmin happens to have any such treasure, the whole should go to him, for *he is the lord of all*"

"If any other inferior caste comes by a hidden treasure, the King takes one-sixth of it, if, however, without informing the King of its acquisition he attempts to appropriate the whole, he should be punished and the treasure confiscated"[1]

Yajnabalkya lays down the rate of interest for various articles or ratha, the increase to be returned for loans in kind, something like the *commodatum* of the Roman lawyers, he says —

"The interest on loans of cloth, grains, and gold should be four, three and two times according to the Smriti"[2]

Under the heading rescission of contracts the sage Yajnabalkya provides for the time within which the purchaser is bound to return the thing purchased and lays down as follows —

"Ten days, one day, five days, one week, one month, three days, and a fortnight

1 Sloka 35, Vyabahara Kanda.
2 Sloka 36 Byabahara
3 Sloka 40 Byabahara.

form, in order, the time for examination and return of seeds, iron, beast of burden, gems, female servants, milch cows and man-servants[1].

And in the Sloka which follows Yajnabalkya records the intimate knowledge of the people as to the loss of weight of metals when they are treated with fire.

"Gold does not suffer deterioration, of silver is two, of tin and lead eight, of copper five and of iron ten *palas* per hundred[2]".

Yajnabalkya like Manu ordains pecuniary punishment for crimes—I shall simply refer to the slokas, noting any differences which I might find with Manu. After describing different kinds of defamatory words, Yajnabalkya lays down in each case the amount of pecuniary mulct leviable by the King from the offender. Similar rule prevails for some forms of assault, robbery or theft of some specific kinds and for numerous other kinds of transgressions[3].

The point to be noticed is the wide-spread use of metals, at least those we call valuable, in the time of Yajnabalkya As noticed above the *panas*, the *sahasas* etc. are some specific quantities of precious metals of fixed weights.

1 Vyabahara Sloka 180

2 Vyavahara Sloka 181

3 See Vyabahara, Slokas 207-297

The punishment for using *false gold* is horribly severe, for, the sage rules that, "One who uses false gold,—or one who sells forbidden meat—should have his limbs severed and be punished with the highest form of pecuniary punishment[1]"

It seems that wearing of *golden kundals* is also prescribed not only for a *Snatak a Brahmin*, but for Brahmins generally when they are out on any journey[2]

The sage Yajnabalkya enumerates the persons whose food a Brahmin should never touch[3] I draw the particular notice of the reader to the fact that amongst the forbidden people, mention is made of the goldsmith, the seller of weapons, a blacksmith, a weaver, a dyer of cloth

I have drawn the attention of the reader to the method of cleansing vessels of gold and silver employed in the days of Manu, Yajnabalkya simply prescribes water for the purpose[4] and his method seems to be less elaborate, in other passages he tells us how to cleanse lead, copper, brass and impure silver and gold[5], similar provision like Manu s is made for the gift of gold to an

1 Vyabahara Sloka 300
2 See Achara Sloka 133
3 Achara Sls. 161—165.
4 Vide Achara Sls. 182—183
5 Achara Sls. 190—191

adorable Brahmin[1], the reward for the due performance of the Sradha, amongst other desirable objects, is said to be gold, silver and tin as well as success in the use of base metals[2].

Yajnabalkya enjoins the house-holder to perform the daily *Puja* of Vinayaka and his mother, the goddess Ambica and after finishing their worship, the house-holder is directed to offer gold and silver ornaments to Kartikeya, Aditya and other deities for obtaining *Siddhi* (success or fulfilment)[3].

Yajnabalkya directs the King to use *copper-plates* for recording the terms of a gift of land or of any permanent arrangement for the information of future generations[4], then we find a Sloka from which I quote in the original :—হিরণ্যং ব্যাপৃতানীতং ভাণ্ডাগারেষু নিক্ষিপেৎ ।

This may be interpreted either as gold obtained[5] as the profit of royal trades or gold obtained from the mines worked by the King in *Khas* This sloka is of peculiar importance on the question of the ownership of metals in India

The King is desired by the sage to confer gold amongst other articles to a Sotriya Brahmin[6].

1 Achara Sl 201
2 Achara Sls 262—263
3 Vide Achara Sls 287—294
4 Achara Sls 318—320
5 Achara Sl 328
6 Achara Sls 332—333,

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1 Vyabahara Sloka 300
2 See Achara Sloka 133
3 Achara Sls. 161—165.
4 Vide Achara Sls. 182—183.
5 Achara Sls. 190—191

In the Smriti of Yajnabalkya, in addition to the secular punishment prescribed by Manu for the offence of gold-theft whereby the thief was voluntarily to seek punishment in the hands of the king, the thief is directed to perform the penance prescribed for a drunkard, on completion of which he is directed to give away to a Brahmin gold to the weight of his body or such a quantity as would gratify him[1].

I have collected almost all the important passages from Manu ,and Yajnabalkya whose Smritis are of first rate importance , such passages only have been selected which have any bearing on the subject of this present topic. But, other Smritis also abound with passages of similar import ; even at the risk of taxing the patience of the reader I shall draw his attention to passages from these relevant to the prsent enquiry.

Let us examine the Sanhita of Gautama.

This Rishi also mentions the prceduire for the purification of metal vessels[2]. We find a significant passage in this work in Chapter VII where the author discusses the various trades and callings which a Brahmin in distress may be allowed to

1 Prayas, Sloka 358

2 Gautama, Ch 1

adopt amongst which is sanctioned dealing in all kinds of metals This indeed shows a relaxation of the orthodox Aryan contempt for such trades which is observable in the Smritis of Manu and Yajnabalkya Speaking about the sources of revenue of the king, it is stated —

"Cultivators should pay a tenth, eighth or sixth part of their produce to the king as *revenue* several authorities aver that a fiftieth part of profit on animals and *gold* should be paid to the king , and generally a twentieth part of the profits of trade should go to the king, since he ensures the safe possession of all these articles[1]

The law of treasure-trove is similar to the rules of Manu , custom is one of the elements which the sage directs the royal tribunals to take into consideration for the determinations of the contentions of subjects[2] Theft of gold is a crime of the most heinous kind[3] and the punishment which is provided for the offence is the same as in Manu and Yajnabalkya Many gifts are capable of being accepted even from Sudras only for the purpose of celebrating a marriage or performing a *Yajna*[4] While speaking of

1 Gautama Ch. XI.
2 Gautama Ch. XII.
3 Gautama Ch. XII
4 Gautama Ch. XVIII

the duties of different castes and orders, the sage ordains the house-holder to make gifts of gold[1]

At the next incarnation or birth, a gold-stealer suffers from bad nails while a seller of lead or brass is afflicted with the vice of drunkenness[2]. Mention is made of a golden pitcher in connexion with the expiatory ceremony for holding conversation with some classes of offenders[3]. Killing in certain instances is sufficiently atoned for by the gift of iron or lead[4]

Apastamba was an inhabitant of Southern India and his law-book was meant for the Andhras of South-East India[5], he probably belongs to the 1st century before Christ, or may be even earlier ; this sage is rather of a puritanical turn of mind We shall collect some passages from him as peculiarities of the South of India, the country of the Dravidian races, to indicate the amount of light we may obtain there.

Apastamba deals with the question of the purification of articles or utensils composed of bell-metal, gold and brass[6]. Relations of a woman who live by selling

1 Gautama, Ch XIX

2 Gautama, Ch XX

3 Gautama, Ch XXII

4 Gautama, Ch XXIII

5 Cambridge History, P 229, 227 and 130, note 1.

6 Apastamba, Ch 8, Verses 1-4

golden ornaments which constitute the lady's *Stridhanam* commit sin and would suffer worse fate in the next world[1] We are not given any light on the question of the ownership of minerals by this sage who was a native of that part of India which was, from very ancient days, the store-house of mineral wealth and of precious stones This fact is very suggestive

Let us take up the *Sanhita of Basistha*, who is – probably an inhabitant of Northern India He describes the offence of stealing a Brahmin s gold as a *Maha Pataka*[2], and lower down in the same Chapter he permits the king to take even a sixth part of the riches of all classes of subjects except a Brahmin When unable to live by the lawful occupation of his own class, a Brahmin or a Kshatriya may adopt the trade of a Vaisya , but, they should never engage in selling stones, hempen, silken or linen cloth, weapon, iron, tin & lead[3] Double is the increase for gold[4] I need not quote in details the rules relating to treasure-trove and the purification of metals except mentioning that amongst metals reference is made to copper bell metal, silver and

1 Apastamba, Ch. IX, Sl. 26
2 Basistha, Ch 1
3 Basistha, Ch. II.
4 Basistha, Ch. II.

gold. Stones, pearls and gems are also mentioned[1].

The sage prohibits a Brahmin devoid of learning from accepting gifts of gold[2]. Golden ear-rings may be worn by a *Snataka*[3]. In Chapter XVII of his Sanhita, the sage pronounces the duties of the sovereign I take the liberty of quoting some very important passages from this Chapter .—

Paying attention to all the laws of the countries. duties of castes and of families, a king shall make the four castes follow their respective duties..............The king shall not take property for his own use from the inhabitants of his kingdom. The *measures and price of property only shall be subject to taxes*[4]

Reference is made to an iron-image in connexion with a penitential process[5]

The Sanhita ascribed to the *sage Vishnu* is believed to be an old work and we shall therefore quote some texts from him.

The third Chapter of this Sanhita deals elaborately with the duties of the sovereign. The king shall collect as his revenue two percent on all animals, gold and cloth[6]

1 Basistha, Ch III, Ch. V
2 Basistha, Ch VI
3 Basistha, Ch V
4 Basistha, Ch VVII
5 Basistha, Ch VVIII
6 Vishnu, Ch 3 Sl II.

He shall take one-tenth of the profit of all indigenous articles as duty and one-twentieth on all *imported* articles[1]. Down below in this Chapter we find Vishnu apparently laying down that the king shall take all from the mines (of a newly acquired kingdom)[2]

A deed of *gift* should be inscribed upon a copper plate[3]

Chapter IV deals with the measures for gold, silver and copper and are identical with the measures found in the other Smritis and Sanhitas

Theft of gold and silver is, as usual, considered to be a crime for which the offender is directed to be destroyed by the king

Pecuniary punishment plays a very important part in this work and reference is made to gold coins[4] and gems[5] After laying down the punishment for a large variety of offences, the sage draws attention to the fact, which we must never forget, *that the rules of law* laid down in the Smritis are but fragmentary and incomplete, for, says the sage —

1 Vishnu Ch. 3, Sl. 15.
2 Vishnu, Ch 3 Sl. 55
3 Vishnu, Ch. 3, Sl, 83.
4 Vishnu, Ch. V—Sl. 98 and 178.
5 Vishnu, Ch. V Sl. 86

"The stealer of a public property shall be banished , the same is the punishment for one who transgresses any *common law*[1]" , and there is always a reserve of royal justice—

" In other crimes (which have not been mentioned), the king, after hearing the age, caste and position of the delinquent and consulting the Brahmins, shall award adequate punishment[2]"

The highest accumulation of interest on gold is two-fold as in all the other Smritis[3] ; the judge shall ask a Vaisya to swear by a cow, seed and gold[4] , in monetary transactions, the king shall make gold the standard of valuation[5] and according to the valuation of the article forming the subject-matter of dispute, the Sudra is directed to be sworn as a witness with silver or gold in his hand[6]. Reference to goldsmiths and braziers is found in Chapter X where the procedure of the trial by ordeal of the balance is described. Iron-balls are indispensable in a trial by ordeal of the fire.

1 Vishnu, Ch V Sls 161, 162
2 Vishnu, Ch V Sl 189
3 Vishnu, Ch. VI , Sl 11
4 Vishnu, Ch. VIII, Sl 22
5 Vishnu, Ch IX, Sl 4
6 Vishnu, Ch IX, Sls 7, 8, 9, 10

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1 Vishnu, Ch 3, Sl. 15
2 Vishnu, Ch 3 Sl. 35.
3 Vishnu Ch. 3, Sl, 68.
4 Vishnu, Ch. V—Sl. 98 and 178
5 Vishnu, Ch. V Sl. 80

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1 Vishnu, Ch V Sls 161, 162
2 Vishnu, Ch V Sl 189
3 Vishnu, Ch. VI, Sl 11
4 Vishnu, Ch VIII, Sl 22
5 Vishnu, Ch IX, Sl 4
6 Vishnu, Ch IX, Sls. 7, 8, 9, 10

In Chapter XXIII which deals with the method of purification of things, the sage prescribed rules for purifying iron vessels, articles made of gold, copper, tin, lead and bell-metal[1]

Theft of gold was considered to be such a grave crime that the sage likens the appropriation of trust money and the ouster of a Brahmin from his land to the theft of this precious and highly valued metal, though to be employed by the king's order even in working all kinds of mines was regarded as an *Upa Pataka*[2]

Upon re-birth, a gold stealer suffers from disease of the nails[3]

The sage directs a person to perform a *Soma* sacrifice as penance for *taking the* boiled rice of a goldsmith[4], an iron smith, *a Nishad*, manufacturers of bamboo articles, and a seller of arms[5]

Traditional self denunciation *of a stealer of Brahmin s* gold we also find[6]

Penance of *Chandrayana* must be performed by a man who sells tin, mother of

1 Vishnu, Ch. XXIII, Slokas 2, 7 24, & 25.
2 Vishnu, Ch. XXXVII Sloka 22.
3 Vishnu, Ch. XLV 5.
4 Vishnu, Ch LI, Sl 11
5 Vishnu Ch. LI. Sl. 14.
6 Vishnu. Ch. LII Sl. 1

pearls, lead, and steel[1] If a person mutters the *Gayatri Mantra* ten thousand times, he may be purified from the sin of gold-stealing[2]. It is auspicious for a person to circum-ambulate ornaments of gold and silver, amongst other things[3]. In performing *Daiva* and *Pitri* rites, one must not offer ornaments made of artificial gold or imitation gem Two ear rings of gold must be worn by a Brahmin[4].

A *Sraddha* ceremony performed under the auspices of the asterism Vishakha gives gold[5] and one done under the auspices of the 12th day of the fortnight gives longevity, opulence, gold, silver and a kingdom[6]. At the *Sraddha* ceremony, metal utensils, specially those made of silver, must be given to a Brahmin[7], the *Hota Priest* of a *Vrishotsarga* ceremony must be presented with gold and white brass[8]. References directing gift of gold to a Brahmin may be found in this Smriti[9] and the reward of this work of piety is an abode in

1 Vishnu, Ch LIV —Sl 19
2 Vishnu, Ch LV, Sl 5
3 Vishnu, Ch, LXIII, Sl 32
4 Vishnu, Ch. LXXI, 10
5 Vishnu, Ch. LXXVI, Sl 21
6 Vishnu, Ch LXXVII, Sl 47
7 Vishnu, Ch LXXIX, Sl 15
8 Vishnu, Ch LXXXVI, Sl 17
9 Vishnu, Chapter XC, Sloka 1, Chapter XCII.

the region of the fire-god. The gift of silver secures for the giver personal beauty in the next re-birth

Perhaps the patience of the reader has been sorely put to by the tedious process of going through the texts of the Smritis and Sanhitas collected above, the object which I had in view was to place before him such an over whelming mass of evidentiary matter as cannot but fail to produce an impression on his mind as to how thoroughly the use of metals permeated the social life of the Aryans in those days of ancient Indian civilisation when those works were the fountain-heads of rules of conduct alike for the subject and the sovereign

It is abundantly clear, therefore, that the Aryans knew the value of metals to a surprisingly large extent, that gold at least was an object of great desire amongst them, that the use of vessels of metal was known to them, that trade in metals was a regular feature of the commercial world, that revenue was collected for the royal treasury from merchants who were engaged in such trade, that the working of mines was carried on that coins were in circulation Copper and gold were two of the metals which were used by the Aryan—speaking people from very ancient times In fact Professor

Haddon notes that from B C. 2500 these metals were not only well known to them but were in constant use by the Aryan—community.

Occupations in connexion with metals developed and castes like those of the goldsmith and blacksmith arose, but their social position was very low ; to a Brahmin even in extremity such occupations were forbidden ; Chandals and other non-Aryan people used to wear ornaments of baser metals , while, even the holy *Sanataka* student is enjoined to wear two golden *Kundals* , wearing of gold and silver ornaments was a common practice amongst the higher classes of the Aryan people.

The form of punishment for many offences assumed pecuniary amercement ; the king laid down the standard for the weight of metals down to copper.

Theft of gold seems to have been a very common offence ; all the authors I have cited provide the highest form of punishment for this crime , not satisfied with a secular form of punishment only, they provide a rigorous penance for the expiation of the sin of the offender , and further than this, he is threatened with untold re-births in lower forms of life before assuming birth in the human shape ,

even then some form of deformity marks the original sin of stealing gold.

Gift of gold is encouraged and a pious and learned Brahmin is pointed out as the sole and proper object to bestow such gift on, while it is regarded as a sin for any other Brahmin to accept the gift of gold and at the same time, the donor is also tainted with sin. Blessings in this life and in the life to come are showered on the judicious donor of gold. Gifts of gold or even of silver are absolutely necessary for the due performance of the Sraddha ceremony, which, as everybody knows, was an institution of great importance in the Brahminical social and religious scheme So highly did the Aryans prize the acquisition of the precious metals that the performance of the Sraddha rite on certain particular *tithis* is said to be rewarded with possession of gold and silver to one's heart's content.

The process of purification of metals was very well-known both from the sacerdotal as well as from the chemical points of view, gold was known to lose in weight when tested by fire

From the point of view of the lawyer, we have seen rules have been laid down in the Smritis on the subject of the appropriation of hidden treasure or rather treasure trove

as between conflicting claimants; we see that rules exist for regulating the royal demand of revenue on metal dealers; but, significantly enough, there is no answer to the question as to who owned the mine, as to whether the subject had any right whatsover to the minerals underground; on a first reading, therefore, we find ourselves not in the least enlightened by these six representative works on the Hindu law of ancient India. I am not unmindful of some ambiguous texts in Manu, Vishnu and other Smriti-works and I shall show that these texts do not afford any solid basis for the solution of the question of the right to the minerals under-ground.

Now it is almost a truism that whatever lawyer's law of the Hindus we now have access to must be found within the pages of the Smritis and Sanhitas; while, in those instances, where the sacred books are marked by the absence of any specific rules, they supply us with the general principles to be applied, marking out an ancient custom as a rule of law. A reference to the sources of law as defined by the jurists of this age will clearly explain my meaning and will, I am sure, put us on the proper course of enquiry to be pursued for the solution of the problem of subsoil rights.

CHAPTER II

The Mineral Wealth of India

In the previous Chapter I have just raised the question whether the gold of this land of "barbarous pearl and gold" was entirely or at least chiefly obtained by external commercial intercourse, and this idea may not unnaturally suggest the theory that the mineral products in use in India from very ancient times were all obtained as the result of India s favourable balance of trade, in fact, this suggestion is not entirely novel, so, if we are able to establish this position, we may, in that event, get a satisfactory explanation for the absence of all definite rules for the regula tion of rights to under ground minerals Now therefore, it behoves me to discuss this theory which might at first sight be thought to supply a cogent answer to the enigmatic situation revealed by the study of the ancient literature of India upon this topic

Eminent authorities headed by Lasson hold the view that the precious metals were not indigenous to India and India obtained her supply of these metals by importing them from foreign countries, I think that

this proposition is only partially true Let us, therefore, discuss the view of Lassen in the light of modern research , first of all, let us examine the basis of the view held by Lassen and others[1].

There is ample evidence showing the vastness of ancient Indian commerce. It was evidently through the medium of commerce that Brahmi character, which is of the Phoenician type of writing as represented by the inscription on which Mesha, king of Moab (B. C. 800) recorded his successful revolt against the kingdom of Israel, was brought into India[2] A very early commercial intercourse grew up between India and the Western Semitic colonies[3]. The well-known Buddist-Birth-story—the Baveru Jataka—shows how Hindu merchants traded with Babylonia[4] Prior to the seventh century B. C and for long ages afterwards, we have proof of trade relations between India and Persia and through the Persian gulf, with Babylon[5] When from the middle of the third century B C., the

1 See, Dr Radhakumud Mukherji's monograph on Ancient Indian Shipping

2 P 62, Cambridge History of India, Vol 1

3 Kaegi, Rig-Veda, Introd P 14.

4 See Samaddar's Economic Conditions in Ancient India p 144, also Cambridge History of India Vol 1 p 212

5 P. 329 Cambridge History of India Vol 1

land ways, which connected India with the west, became increasingly difficult after the establishment of hostile Yavana powers in Bactria and Parthia, commerce was still maintained with Mespotomia (Babylon), *and Egypt* through the Persian gulf and the Red Sea[1]

Trade was active, various and minutely *regulated* in the Maurya Empire, the precious wares included *many species of* gold, silver spices and cosmetics from all parts of India, jewels, including pearls from Southern India, Ceylon and beyond the sea, skins from Central Asia and China, muslin, cotton silk from China and Further India[2]"

The primary wants of the people of India were then, as even now, very few and very simple *to meet her secondary* wants, India had *to import* tin, lead, glass, amber, steel for arms medicinal drugs and frankincense Indian exports found a ready market in Persia, Arabia, Rome, Greece and in an even earlier historic period in Babylonia and Assyria Pliny, in his Natural History, has minutely descri bed the exports from India which consisted, among other things, of precious stones and

1 P 516, Cambridge History of India Vol. I.
2 P 478 Cambridge History of India, Vol. I

pearls. There was a large trade also in pepper, spices, beryl, cotton and linen fabrics, peculiar and beautiful animals and birds of India, silks and dye-stuffs. This matter has been described with that firm and full grasp, so characteristic of him, by the historian V. A. Smith in his Ancient History[1].

Now in payment for these exports, vast quantities of gold poured into India. Pliny calculated that £70000 of modern English money in gold were withdrawn from Rome annually into India to purchase useless oriental products, such as perfumes, ungueants and personal ornaments. It is also supposed that it was the same flow of gold into India from outside which enabled the Indian Satrapy of Darius to pay him "the enormous tribute of 360 euboic talents of gold dust worth fully a million sterling" as revenue (per year)[2].

The standard gold coin of ancient Persia—the daric—found its way across the Hindu-kush into the Indian territory and was soon exported out of the country owing to economic reasons[3].

Of the vast extent of Dravidian commerce there is ample evidence in Tamil

1 See also Pliny, in M'Crindle's Ancient India

2 Herodotus in M'Crindle's India P 1

3 Cambridge History of India Vol 1, p 342-43

literature, and in the quantities of Roman coins discovered in Southern India[1]

Roman coins in abundance are found in the South of India and comparatively larger finds have been discovered in the southern than in the northern portion of India and Roman gold flowed into the *treasuries of the Rajas in payment of* Indian exports[2] Vast quantities of specie found their way into India during the Kushan Period of Indian History as Pliny and the author of the *Periplus both state* In Southern India, *Rajas* used the standard Roman coins as their currency

The Tamils of Southern India imported large quantities of gold and silver in exchange for their peculiar and valuable products which found a ready market in the countries of the west Ancient Tamil poetry is replete with references to the ships of the Yavans bringing gold into the Tamil country, and the most definite facts recorded of South Indian History before the rise of the Andhra Power are those of its commercial relations with Europe and North of India Amongst commodities like pearls ivory, rice, pepper, peacocks and apes, gold produced in South

1 See Havel's History of *Aryan Rule in India* p 120.
2 See also Megasthenes in *M Crindle's Ancient India.*

Indian mines was carried in Dravidian ships from the seaports of the west coast and found its way to Babylon, Egypt, Greece and Rome. This trade can be traced back to the Seventh or the Eighth century B. C[1].

As a consequence of all this vast external trade, India, it is suggested, throughout her ancient glorious commercial career, "had the balance of trade clearly in her favour, a balance which could only be settled by the export of treasure from European and other countries that were commercially indebted to her. For India desired nothing which the foreigners could give her but the precious metals. Thus has she been for many centuries the final depository of a large portion of the metalic wealth of the world ......The supply of gold she obtained... by the more natural and peaceful method of commerce[2]."

But from very ancient times, tradition spoke of India as rich in gold and Herodotus related the story of the gold-digging ants which has been shown by Sir H Robinson and Dr. Schiern to have originated in the peculiar customs of the Tibetan gold-miners and the name ant-gold was

1 See Hall's History of the Near East pp 173-174

2 Industrial Competition by C. Daniel, F.S.S., I.C.S., P. 228.

probably given to the fragments of gold dust brought from Tibet on account of shape and size[1].

I have already drawn the reader's attention to the enormous gold tribute which the Indian Satrapy of Darius annually contributed to the coffers of the Persian Emperor as revenue and to the view that all this gold was imported from outside India and that gold and silver were never indigenous to the Indian Continent. On this subject, the view of that eminent geologist, Professor Ball, F R S is interesting and supplies adequate and solid data on which the view of total importation of precious metals may be safely rejected.

The portion of India conquered by Darius may undoubtedly be located as the part situated to the North West of the Indus[2]. The great river Indus and some of its tributaries are auriferous. Recent geological knowledge of the Indian mineral world affords evidence to show that the amount of gold derived from native sources must have been very considerable before the auriferous alluvial deposits were exhausted of their gold. I cannot do anything better

1 See also the 1st Chapter on this topic.

2 See Note at P 1 of M'Crindle's Ancient India, and also Cambridge History of India, Vol. I P 339 and 340

here than quote the view of Prof. Ball, which has been published in the Indian Antiquary, Vol. 13, P 230 etc, and which conclusively proves that the view of the eminent Indologists headed by Prof. Lassen can no longer be reasonably maintained. The learned Professor says :—

"When it is remembered that about 80 per cent of the gold raised throughout the world is from alluvial deposits, and when this fact is considered in connexion with the reflection that wide tracts in Australia and America, formerly richly productive, are now deserted being covered with exhausted trailings, it can be conceived how the regions in India—and there are many of them—which are known to be auriferous, may, in the lapse of time, after yielding large supplies of gold, have become too exhausted to be of much present consideration. More than this, however, recent explorations have confirmed the fact, often previously asserted, that in Southern India there are indications of extended mining operations having been carried on there ....Evidence exists of the most conclusive kind of large quantities of gold having been amassed by Indian monarchs, who accepted a revenue in gold-dust only from certain sections of their subjects, who were

consequently compelled to spend several months of every year working for it in the rivers.[1]

The out-lying portions of Northern and Eastern India, abound in mines of gold and silver The travellers in those regions give evidence of the use of gold and silver ornaments by the tribes, who are very low in the scale of civilisation

The Khunongs (a tribe found east of Hka'-into-Long, in Upper Assam) trade with the neighbouring nations, including the Chinese, the Burmans and the Tibetans and their most valuable possessions are the silver mines of Nogmung, east of the Naon Tisang. The late Gen. MacGregor visited these silver mines. These hill tribes have a considerable business in gold and gold in plentiful quantities are found in their native hills. The aboriginal inhabitants of these localities report that extensive silver mines exist to the east of the Nonai kha river

It is well-known that the Himalayan regions in the North of India contain abundant sources of mineral-wealth, including even coal That Tibet from very ancient times supplied gold to India is obvious from the story of the gold-digging ants

1 L. W Shakespeare History of Upper Assam P 178

which had been current over the world since the days of Herodotus. Modern authorities have discovered the truth, which this almost ridiculous story contained and which, I have stated previously, referred to the peculiar process employed by the miners in the Himalayan regions Kasmir also was a source of gold in as much as the existence of mines in this country is described alike by Greek and Sanskrit authors. The Derdai never smelt gold-dust but sold it in the state of ore for any price to the merchants[1]. These people are the Darads of Sanskrit literature[2].

Professor Gowland, after considering the chief localities of the ancient world including India, where gold-bearing gravels and rocks have been worked in early times, raised the interesting question as to whence each of the various peoples and nations of antiquity obtained their gold and concluded that distance in respect of commerce in gold did not appear to be an insuperable obstacle. He notices the view that Babylonians obtained much gold from India, but rejects its validity on the ground that there is no satisfactory evidence to show

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1 P 51, M'Crindle's Ancient India

2, Note 1, P 51, do do

that India was an exporter of gold[1] The question as to whence India obtained her gold has not been dealt with by him, but, it appears, from his estimate of the probable yielding capacity of ancient Indian mines and from the fact mentioned by him that gold in small quantities occurs in the sand and gravels of many rivers and streams, that in his opinion, India must have obtained gold by way of commerce He, however, does not give a definite pronouncement on the question[2] But the reference just before made from Hall clearly proves how South-Indian gold was exported out of the country into *Babylon, Egypt*, Greece and Rome

I may here request the reader to remember the account, already quoted before, of the origin of gold in Ancient Sanskrit works and the locality where that metal could be had It would be seen that the conclusion of Prof Ball exactly fits in with the observations of the writers of *Ancient* India that gold in those days could only be procured from the sands in the rivers This statement is true and this method was in vogue in *India, north of the* Vindhya Range, where, indeed, the *Sanskrit*

1 See, however Havel's Aryan Rule in India p 129 & Hall's History of the Near East P 173-174

2 P 260 & 261 of Vol. XVII J R. A. L

works, which relate the theory of the origin of gold above referred to, were composed

It has now been definitely settled that copper, iron, gold and gem stones were not only widely distributed throughout India, but, these metals were worked almost from time immemorial[1]. Gold was known to man when he had no knowledge of other metals, indeed, we may go so far as to say that the appearance of gold is co-eval with the dawn of civilisation Even the men of the later stone age, called the Neolithic period by Lubbuck, had no knowledge of any other metal except gold Though chrono logically gold is the oldest of metals known to man, it is not definitely known as to which race or people first came to have knowledge of, or brought this metal into use. So far as India is concerned there is sound reason to hold that the Dravidians were acquainted with this metal before the Aryan migration.

Gold and iron, at any rate, were very widely distributed throughout India, and in every province of the Indian Empire washing of alluvial gold from the sands of the

1 See Vol III of the Journal of the Department of Letters for the year 1920, P. 210 etc published by the University of Calcutta.

2. See Osbrne, Men of the Old Stone Age, P 13

rivers is or has been practised by the native inhabitants. The Palaeolithic people of the Deccan directly obtained gold from the quartz veins or schists of Southern India, as La Touche has shown. Various pre-historic deep underground sites of Tinnevally in South India clearly indicate that gold was obtained therefrom in very ancient times Indeed, almost all the gold-bearing districts in India are confined within the bounds of Southern India (Jashpur, Mysore Haidrabad and Wyanaad District of Malabar and Nilgiri), where mining for gold was undertaken in old days, although gold occurs in small quantities in the sands and gravels of many rivers and streams all through the continent of India as also in the Himalayan regions[1]

Indeed, Prof Gowland was doubtful whether the gold of India, which had been in all times regarded as a land of gold, could all be obtained from the working of the mines, which were chiefly located in comparatively small areas in Southern India and from the small quantities procured from the sands and gravels of the many rivers and streams throughout India or by external commerce. But, there is every

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1. Gowland, in the Journal of the Royal Anthropological Institute Vol. XVII, P 260

reason to suppose that the river-washings, though they may now yield insufficient return, were not always so economically barren as Prof Ball has established.

Therefore, we think we may safely take it as an established fact that even though India obtained a considerable quantity of species from foreign countries, her own internal production of gold was also considerable

I shall now take up in succession some other minerals. India is not rich in silver mines and we have seen silver is not much mentioned in the ancient literature.

Greek writers mention the existence of silver mines in Mousi Kanos, which the authorities have identified with the Kingdom of Upper Sind[1]. Macdonell and Keith, as I have noticed above, make mention of the use of silver amongst the Vedic Indians.

Reference, however, may be made to certain passages in the Ramayana[2], where the habitat of the Koshakara has been described as रजताकराण्. Professor S. Krishnaswami Aiyangar of the Madras University has identified this country with modern Assam. He says.—" If it is permissible to locate this on the basis of the data available to

1 P, 41 of M' Crindle's Ancient India

2 IV, 40, 121 etc, Kumba Konam Edition,

us, the habitat of the Koşakaras will correspond to Assam The term Kosakara is explained by the commentary called Tilaka as a people engaged in the work of rearing silk worms and manufacturing silk These Kosakaras were an ancient people and they might have formed part of the Mauryan Army which invaded South India under the Mauryas led by either Chandra gupta or his son Bimbisar[1]

The presence of silver ornaments in the Gungeria hoard from the Central Provinces has raised the question whether the silver thus employed in making implements and ornaments was exported into India I have already shown the existence of silver mines in India and according to Sir John Mashall the silver used was indigenous, since, it was no difficult task for those who were proficient in the difficult metallurgical processes by which copper is extracted from its ores to smelt silver from the rich argentiferous galenas which occur in various localities[2]

From all this, it is quite clear that silver mines existed in ancient India and silver of Indian origin was used by *the Indian people*

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1 P 94 of *Beginnings of South Indian History* by Prof S K. Aiyangar

2. Cambridge History of India Vol I P 615

Copper ore is also of wide occurence in India Old Copper workings have been reported from Indore, Nellore, Singbhum, Sikkim and Kumaun Many of these seats of ancient workings are located in places inhabited by peoples who are regarded as the descendants of the Pre-Aryans of India[1] The Indians use Copper which has been fused but not wrought[2].

Mineral salt has been found in India in the mountain ranges[3]. Pliny in his book gives the following description of salt mines in India:—"There are mountains also formed of native salt, as, for instance, Ormenus, in India, where it is cut out like blocks from a quarry and is continually reproduced; whence a greater revenue accrues to the sovereigns of the country than they derive from gold and pearls." This Ormenus or Oromenus is the salt range of hills between the Indus and the Hydaspes[4]

So for as iron is concerned, India might have been fitly designated as the land of iron, in as much as the ore is very widely distributed over this vast land and workings

1 See Gowland, J R A I Vol XVII P 245
2 P 73, M Crindle's Ancient India
3. Clitarchus, in M' Crindle Ancient India—P 99
4 See Pliny, quoted in M Crindle's Ancient India

have been discovered in numerous places In pre-Aryan India, iron industry was in a flourishing condition, and the quality of steel produced was superior Bruce Foote holds that the iron industry of India is one of great antiquity , traces of iron-smelting have been discovered in the Deccan[1]

Vincent Smith is of opinion that the Aryans in India did not possess the knowl edge of iron in the days of the Rig Veda , while, in his epinion, it is clear that the Aryans acquired the knowledge of this metal by the time of the composition of the Atharva Veda and the Satapatha Brahman Vincent Smith states that he finds that there is no mention of iron in the Rig Veda but I think there are some Mantras, where mention of iron has been made, for, in Rig Veda, 1 52-8 we find it stated, as already noted by me, that the God Indra holds an iron-thunder in his hand and also in Rig Veda, 1 88-5 the chariot of the Maruts is stated to possess iron spikes Of course a different interpretation might be put on these passages by Mr Smith but I have taken the meaning current in India in the commentaries of the great Scholiast Sayana

1 See M. P Mitra in the Journal of the Dept. of letters C, U Vol III, 1920.

So we may take it as established that the Vedic Aryans learnt the use of iron from their pre-Aryan neighbours in India from the days of their earliest establishment in this country When we remember that India had a vast population of pre-Aryan inhabitants about the places where first the Aryans settled[1], it is not at all surprising to find the Aryans acquiring the knowledge of such a useful metal as iron soon after their settlement in those primitive days when the hymns of the Rig-Veda were being sung under the blue sky of Northern India[2] Manu speaks of the use of iron ornaments by Chandals[3]. But then the student need not rest satisfie withd the archæological evidence of mineral working in India, there is reliable evidence that in the age represented by the Smritis[1] सर्व्वाकरेष्वधिकार महायन्त्रप्रवर्त्तन was an act considered in the light of an *Upa-pataka* for an Aryan This, indeed, is a piece of evidence which is very suggestive and shows that the community governed by the rules of the Smritis could not lawfully work any mines even under the command of the sovereign and mines were worked by people other than the Aryan, Buhler in

1 See Prof Sylvan Levi's Lecture in the Bolpur University as summarised in the Santi Niketan Patrika for Baisakh, 1329 B S

2 See the opposite view in Chap VI of Cambridge History of India Vol 1

3 Manu, Ch X, slokas 51-53

4, Sloka 64 Ch XI of Manu,

his translation of this Sloka, does not accept Kulluka's explanation and renders सर्वाकरेष्वधिकारः as superintending mines (or factories) of all sorts But the meaning of Kulluka appears to be better

Kulluka, the great commentator of Manu in his commentary on the Sloka referred to above, explains the original text as सुवर्णाद्युत्पत्तिस्थानेषु राजाज्ञया अधिकारः and regards the undertaking of mining *operation for gold* and other minerals even under the command of the King as an *Upa pataka*

In the Artha Sastra of Kautilya the prime minister of Chandra Gupta, it is stated that a Brahman convicted of ordinary heinous crime murder included was exempt from torture, but should be either banished or sentenced to the mines for life[1]

The Artha Sastra describes in much detail the duties of the heads of numerous departments in the administration of a regularly constituted Hindu State Specific mention is made of officers in charge of markets, rivers, canal *irrigation*, public works, and different branches of fiscal business , mention also is made of superintendents of hunters, wood cutters blacksmiths carpenters etc.[2] The *Samahartaram* or the

1 Oxford History V Smith p. 80

2. Cambridge History of India Vol I P 487

minister of the Interior and Chancellor of the Exchequer dealt with the whole income of the State, including that of the Royal domains and amongst the main heads of income may be noticed the special income from irrigated lands and that from pastures forests, mines and other works[1].

So, it is abundantly clear that in the 4th century B C. when Chandra Gupta was building up the great Maurya Empire in India, mines were worked for their valuable contents to such a large extent that it was thought expedient by the government to appoint special officers to look after the miners.

We may in this place remind the reader that in modern times legislation for regulating work in the mines has been undertaken by all civilised Governments, including also the British Administration in India; one of the main objects of such legislation has always been the introduction of plenary measures intended to better the condition of the mining population. It may not, therefore, be out of place, in this work to examine whether any detailed rules were promulgated on this topic by

1 See V Smith s Oxford History Chapter XIX, and Cambridge History of India, Vol 1 p 487

good of the public, and therefore, the community, in its corporate character as opposed to a private individual, might not unreasonably be supposed to own the mineral-wealth of the country[1]

By the common law of England, gold and silver mines belong to the Crown even though they may be situated in the lands of a subject and students of English legal history are familiar with the political reason which is ascribed for the aforesaid rule This prerogative right of the Crown is said to owe its origin to the royal need of supplies for war and the coinage[2]

We see also that the Crown in England as the general owner of the fore shore enjoys the right to mines thereunder This right extends in Scotland to all mines underlying the waters of the ocean whether within the narrow seas or from the coast outwards to the three miles limit; similarly, the Crown by prerogative right is entitled to dig for saltpetre in the lands of a subject[3]

These instances of the royal right to minerals underneath the soil might not be unreasonably regarded as the residuum

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1 See Encyclo Br Vol. XIV P 208.
2 See Case of Mines, 1568—1 Plowden—310
3 Halsbury's Laws of England Vol. VII Pages 11 and 116

of an ancient extensive right of the Crown to all minerals under the earth. A permissible analogy for such a position may very well be drawn from the English law regarding the right of the Crown to all treasure concealed beneath the earth, which does not belong either to the finder or to the owner of the land. The discovery of valuable mines, like the discovery of hidden treasure beneath the soil, often times is the result of the merest accident and there cannot be any cogent and valid objection to the assimilation of juridical rules regarding the ownership of mines to those regulating the finds of treasure beneath the soil.

Phillips in his Tagore Law Lectures for 1874-75 says that "Hindu Law recognised rights in the sovereign and in the cultivator but does not contemplate any ordinary use of the land except for the purpose of cultivation but simply contemplates an obligation on the part of the king to protect the cultivator, corresponding with his right to receive revenue from him There is no trace in express Hindu Law of a right in any one to take land out of cultivation and to turn it into a pleasure ground for instance or to exhaust the minerals under it. The mention of minerals in connexion withdiscovered hoards seems to show that they were

(*a*) *Gold brought by the agents*[1]

(*b*) Gold brought by transactions mining) or (*c*) Gold brought by trading

Of the three possible interpretations if the second be the correct one, then the King as owner undertook mining operations and as necessary pre-requisite of that at least gold mines were in Ancient India royal mines as they are in England The third meaning we cannot legitimately accept in as much as Indian Constitutional law, as found in the Smritis and Sukra Niti, did not allow the sovereign to engage in private trade-affairs and his income was solely to be derived from the revenues levied on various things under the directions of the Smriti works. I cannot think for one moment that if private property and private trading were allowed to the King by the ancient constitutional law of India the sages in enumerating the daily minute occupation of the King should have, one and all of them, studiously avoided making any reference to that matter in their often very labouriously detailed description of the King s proper occupations in his life Manu s Chp 7, Yajnabalkya s Achar Kanda, Vishnu Smriti Ch III Goutama Ch X,

1 (See Setlur s edition of Yajnabalkya Com on the Sloka)

as well as the other ancient authorities are silent if the King could ever engage in any private concern of a commercial nature. From this silence it would not be a violent conjecture to infer that in Ancient India an Indian King, whose duties were regulated by the injunctions of the Smritis and works like the Sukra-niti of Sukra Acharya and Kamandakiya Nitisar, could not engage in private commercial or manufacturing or other undertakings, though the State had connexion with and often undertook the development of the natural resources of the country, and gave loans to cultivators for improving the soil and the revenue. I feel no hesitation in coming to this conclusion and in the view which I adopt, the second and third possible interpretations of the text of Yajnaballkya quoted above cannot possibly bear the meaning that the King was to place with his own hands, the gold obtained as profit of his private trade or raised from the mines which he owned.

But in the Cambridge History of India vol 1 P 479, it has been stated apparently on the authority of a sloka of Manu[1] that in Ancient India, at least in the time represented by the Artha Sastra of Kautilya, the king was himself a great

1 Manu (Ch 8, Sl. 399)

trader who disposed of the output of his factories, workshops and prisons and the produce of his lands, forests and mines for which he maintained store houses throughout the country But in spite of the high authority of Dr F W Thomas who is the writer of Chapter xix where the above statement occurs, I think that the text of Manu referred to above can not by any means whatsoever lend support to the view propounded by the learned writer In the first place, the sloka occurs amongst a number of slokas, which lay down the rules for imposition of taxes by the King and the punishment for breach of those rules, and secondly, the sloka authorises the King to deprive a trader of all his possessions, who out of greed sells or carries out of the realm such merchandise or animals or other saleable things as are well-known to be the King s as the primary purchaser or as have been prohibited by the King from being imported outside the country for the same reason This cannot possibly mean that the King purchased such articles for profiteering and no legitimate inference can be drawn from this sloka to the effect that the King was a trader The construction put upon this sloka by Kulluka in his commentary on

dently supports the traditional view that in ancient India except under exceptional circumstances pointed out in the Sastras themselves. the King could not engage in private business As examples of things in regard to which the King has the monopoly of purchase, Kulluka cites elephants and horses, animals which were eminently necessary for the formation of royal armies in ancient times

This conclusion seems, also to be the only reasonable one, if regard be had to the elaborate sources of the revenues which the Smriti-writers have described with painstaking detail Chapter III of Visnnu Sanhita is devoted to the duties of the king and a detailed account of the revenue resources of the king is found in this Chapter consisting of 70 verses and there is no mention of the king's private trade as a source of revenue It seems to me, therefore, that the very idea was repugnant to the notion of sovereignty as elaborated by the Jurists of India In point of theory and fact in the earlier ages of Hindu civilisation and certainly as a matter of theory later on, the royal office was only proper to a Khastriya and commerce was forbidden to a Khastriya under ordinary circumstances and a person belonging to the Khastriya caste was only

allowed by the injunctions of the Smritis *to engage in the occupation of vaisya or a* Sudra when driven thereto by the direst emergency[1]

In the ancient Hindu polity, the king's income, as I have said was invariably to be derived from one legitimate source which is taxation and taxation alone The Maha varata, Santiparba, contains an elaborate account of the royal office as conceived in ancient India There it is laid down that the king was to amass money from the sixth part realised by way of taxation (बलि) upon the produces of the country, which, however, must not be considerable in point of num ber, from the fines realised by punishment given according to the Sastras, from the fee obtained by the protection of merchants on the *roads*[2] *If the king lured by love of* wealth realised taxes from the subjects in a manner not sanctioned by the Shastras, the *consequence* would be his destruction[3] Fur ther, the Protection of subjects has been regarded as the only *Dharma* (duty) of the king[4], and it is also stated that a king who protects his subject according to the

1 (Vishnu Ch.2 Sloka 6, Vasista Ch 2 Goutama Ch. VII).

2 Mahavarata, Santi Parba, 71 Ch. *Slokas 10-11 See also* Sukra-Niti, 4th Ch., 2 Pra. Slo. 18-15.

3 Mahavarata, Santi Parba, 71 Ch. Sloka 15

4 Ramayana, Balkanda, 106 Ch Sloka 19

Shastric injunctions gets a quarter of their religious merit, of the evil arising in the country, the king's share is a fourth[1]. Kamandakiya Niti is an ancient treatise on politics and in this work there are detailed accounts of the duties of the king and also of the ideal which a king who wants to govern well ought to pursue The king has been enjoined by the author to improve the lands of the country and for this purpose, he is directed to select localities which would serve the end. The author advises the king to select localities abounding in crops, mines, merchandise, minerals, where there are areas fit for the grazing of cows, containing much water, sacred localities, beautiful forests abounding in elephants, water route and land route and which do not depend on the periodical rains for fertility, the king should improve localities where Sudras, artists, traders, and cultivators are found in large numbers, obviously it was by means of these classes of people that the King was to develop the country[2] In fact, the necessary conclusion is that the King could never engage in any business whatsoever and must not add to his wealth impelled by greed or anger[3], and

1 Maha, Santi, Ch 75, Slo 6-8
2 See Kamandaka, 4th Ch 50-56
3 Mahavarata, Santi Parba, 71 Ch, Sloka 7

he is enjoined to do such things as are approved by the sages[1] and even though much in want, must not take what the Shastras forbid him to realise[2]

It seems to me, therefore, that there is no room for supposing that the King could have any source of wealth except legitimate taxation[3] That the King's income was invariably to be derived from the revenues collected from the subjects according to the Sastric injunctions, even though the King may find himself in an absolutely distressing circumstance, would appear from the hidden import of a passage of Manu which occurs in the 7th Chapter devoted to Political, Constitutional and Inter-national Law Manu says[4] – म्रियमाणोऽप्याददीत न राजा श्रोत्रियात् करम्

Even if the king were to die for want of money, he must not collect revenue from a Brahmin learned in the Vedas This sloka certainly points by implication that the sole resource of the king for obtaining income is realisation of revenue from his subjects and that no other resource is open to him

The Hindu jurists laid down the law (not always of course in the narrower

1 Mahavarata, Santi, Ch. 130, Sloka 10
2 Manu, Ch. 8, Sloka 178
3 Vasista, Ch. 1
4 Ch 7 Slokardha 133

Austinian Sense) for the entire community consisting of the *four castes* and the king was enjoined to administer the law relating to the various castes and to punish their infringement, and the king according to Shastras was entitled to the *Vali* (revenue) only if he ruled in accordance with the sacred law In times of distress, the king was permitted to raise particular or additional taxation or fine from the subjects of the realm[1] So that in the face of the injunctions of the Sage Vaşistha, it would be impossible to attribute to the king any occupation which is not sanctioned, nay, not even mentioned, by any of the Sages of the law Moreover, the king was directed to gain his livelihood by protecting his subjects guided by the rules of the Shastras and by doing which, as we have seen, he could only gain a legitimate title to collect revenue from his subjects[2].

Indeed, as I have tried to show, Yajnabulkya's text cannot possibly supply even the very slenderest support to the royal ownership of mines in Ancient India In fact, the doing of business in the depth of an underground mine was absolutely repugnant to the instinct of the Aryan Hindu and

1 (Sukra – 4th — 2 pra – Slo, 10)

2 (Sukra Niti 4th Chapter, 2 pra — Sloka 13—15)

was the punishment designed for a Brahmin offender'

The text of Vishnu आकरेभ्य सर्वम आददयात् certainly (on taking the term आकर to mean a mine) enjoins the King to take the entire produce of the mines The Sage while laying down the duties of a King who had subdued a foreign territory ordained that the Royal family of a conquered country should not be eradicated, but the law of that country should be observed and not abolished, in the Sloka immediately proceeding the Sloka quoted above injunction was laid against the Kings bestowing any [1] largesses upon unworthy persons evidently from the resources of the conquered country, and the next sloka runs as follows

"Of a treasure-trove, he must give one half to the Brahmins'

The law relating to treasure trove and hidden property is contained in slokas 56-64 and it admits of no doubt that the rules laid down in these slokas are of general application everywhere whether the territory happens to be a newly conquered one or an older portion of the kingdom The question, therefore might reasonably be asked, why should a different meaning be put on sloka 55 so as to limit

1 See Oxford History P 80

the operation of the sloka to a newly conquered territory of the King? I consider that this is no negligible objection to the delimitation of the operation of the rule, but if the term आकर means mines, the narrower seems to be the correct interpretation, for, in slokas 53 and 54 the sage Vishnu might be regarded as instructing the King not to bestow largesses from the resources of a conquered country on unworthy persons, but to take the produce of the mines, meaning of course the revenue due to the State as the *royal* share from the produce of the mines Such a caution was very timely and necessary, for, in the rash unguarded moments of joyous conquest, it was not unusual for a conquering King to bestow largesses, even including the King's share of the revenue, on persons who might successfully entrap the King into such an act

Apart from the context where the text occurs, it seems to me that it might also have a wider connotation. It may imply, in the first place, that the King is entitled to appropriate the entire produce of the mines in his kingdom withont reference to the circumstance, whether, the mines are located in the older portion or the newly acquired portion of the royal territory, or secondly,

it may mean, in connexion with the context that the King is entitled to appropriate the produce of mines existing in the territory of a newly conquered Kingdom only

The wider connotation renders the King the owner of all mines irrespective of their situation and if this position can be accepted we may safely say that in Ancient India, not only gold, silver and saltpetre, but all mines were *royal* mines. But could *this liberal significance of the text be* accepted? Dr Jolly accepts this sense of the sloka and renders it as 'of mines, let *him take* the whole *produce*

There are great difficulties, however in assuming the position that the mines in *ancient India* belonged *to the sovereign* There are texts in several other Smritis where distinct rules *of* law, *as regards* the King's *right of appropriation of treasure* trove found by different members of the community, have been laid down in such a clear and convincing manner that it does not produce the slightest hesitation in one's mind in accepting them to be rules in actual observance in the community and if there was any rule of law authorising the King to appropriate the produce of mines in actual and practical observance in the community one should have reasonably

expected the Sages to have laid them down there where they ought to have naturally been placed : but strangely enough, the majority of the Sages are silent We find rules regulating the find of treasure-trove in Gautama Ch. X—43. 45 , Vasistha Chapter 3—Sloka 13 , Yjnabalkya II 35 ; Manu VIII Slokas 35, 36, 37. 38, 39. The Sloka 39 of Manu might be so interpreted as to lend some apparent support to Vishnu's theory of *royal* mines and this sloka of Manu. therefore, must require somewhat fuller consideration later on In the first place, the numerous other Smritis are singularly silent upon this subject and it would be rather unsafe to base upon this solitary text of Vishnu a theory of the royal ownership of mines in India But even though unsafe, there could not be any radical objection if one were to accept the authority of Vishnu for this position, supported, as he is. by the authority of the Kautiliyan Artha Shastra. But then, let us analyse the position of the sage Vishnu himself and see what he really intends to say. In the first place, one cannot but fail to observe that the slokas of this chapter always require supplementary words or sentences to make them fully expressive of their real meaning and from

this point of view, we may reasonably justify ourselves in holding that the sage intended the text (whatever its significance might be) to apply to a newly conquered territory Upon this reading of the text, it might be said with great plausibility that the principle of royal ownership of mines was intended by Vishnu to apply to a conquered country only Whether, even this narrower view can be maintained or not, we shall discuss very soon

But, let us revert to the discussion of the broader interpretation which the text might be supposed to bear, the sage directs the King to appoint trustworthy agents in mines, and in forests abounding in elephants, for the collection of taxes Every year, the King shall collect from his subjects two percent on animals, gold, and clothes, one sixth of meat, honey, clarified butter, medicinal herbs ,
he shall collect one tenth of the profit of indigenous articles as duty and one twentieth of that of imported articles.

This sloka (Ch 3—Sl 9) has been translated by Dr Jolly as "Let the King appoint able officials for the working of his mines' and this rendering will certainly support the view that mines were royal property in India when Vishnu, a compara

tively ancient law-giver, composed his work. I am however, disposed to take a different view of the position of the king with reference to the mines in the Kingdom and I proceed to set forth my reasons for the view I put forward I have translated the Sloka 9 (Jolly's 16) of Ch 3 in a different manner as even a cursory comparison would show. The sloka, in regard to which I have ventured to differ from the great Orientalist Dr. Jolly, runs as follows:—आकर शुल्कतर नागवनेष्वाप्तान् नियुञ्जीत ।

Dr. Jolly's rendering of the sloka I have already quoted ; but there are no words in the original sloka to correspond with the words "the working of his" appearing in the above translation of Dr. Jolly ; therefore, evidently, the scholar has interpreted the sloka upon a theory which he already held on the question of the king's relation to the mines of the country ; if the king was admittedly the owner of mines, the translation of Dr Jolly would be the only correct rendering of the sense and the words put in by the great jurist are absolutely necessary to make sense in the sloka But, the position, assumed for the king by him, cannot possibly be accepted, without further proof , and in that view there is hardly any justification for the existence of the words I have taken objec-

tion to in the rendering of Dr Jolly If the contention I put forward be thought to be reasonable the rendering I have given above is certainly the only correct translation of the text

I consider that the translation I have employed is consistent with the whole tenor of Vishnu himself and also with the political theory of the Hindus as to the constitutional position of the King

It is clear from the texts quoted above that the King could have occupied three different positions in respect to the mineral wealth of the country and no fourth position is even adumbrated in the elaborate list of the sources of royal revenue

The king had trustworthy agents in the the mines to facilitate the proper and regular collection of taxes from the produce of the mines *Had the king been really the* owner of the mines as Sloka 55 Ch III, Vishnu (Dr Jolly s Sloka 35) seems to suggest, we fail to see the necessity of a rule for the appointment of agents in the mines for the collection of taxes It might be objected that Sloka 35 refers to a newly acquired territory but then in that case, it is to be admitted that there were no royal mines in the older territories of the kings of India Having regard to the constant dynas

tic changes in the ancient Indian world, this rule, if it was an actual rule in practical use, must have been a source of constant trouble and must have led to a complete chaos of private rights and destruction of private wealth on each new dynastic change in any territory, such a rule of law would have lacked that fundamental characteristic upon which alone any practice should be regarded as occupying the position of a rule of law—viz certainty

The second relation is shadowed forth when the king was directed to realise two precent on gold This source of revenue from gold occurs along with other sources, which are either natural or artificial products of the country, such as meat, honey, clarified butter, cloth etc From the collocation of these different objects which are either the artificial or natural products of the resources of the country itself, it may be reasonably suggested that Vishnu intended that the sovereign's right extended only to the realisation of a two percent revenue in kind on the mineral products of the country This seems to me to be a legitimate construction if the texts are all taken together and construed, and I shall show later on, that this is the orthodox theory of the Hindu law on the royal revenue from the mines in the kingdom.

The third relation is seen when the sage directs the realisation of taxes on imports It has been shown above that a large quantity of specie was imported into the Indian continent from the earliest dawn of our knowledge of Indian society and taxation on imported minerals was surely a very important source of the royal revenue, the sage, therefore, directs that a 5 p c. of the gold and silver or other minerals imported from other countries of the world as profits of trade should be appropriated as royal revenue

If we read the rules of Vishnu as I have done above, I think all the various activities of a civilised society in relation to minerals would come within their scope and the multiple sources of the royal revenue in connexion therewith would bring supplies to the royal treasury bearing in mind that private enterprise was forbidden to a Hindu Sovereign

If I have been successful in correctly interpreting the true bearings of Vishnu's rules on this subject, is there any scope for the King to occupy a fourth relation in regard to the mineral wealth of a country? In that case the wider or even the narrower interpretation of the laconic text of Vishnu becomes meaningless and the text seems to

be either redundant or an interpolation But I consider that it is quite within the cannons of interpretation to put upon this preplexing text a meaning which, far from making it either redundant or interpolated, shows that such a text was a simple necessity for the proper guidance of a conquering King ; for as I stated above, the text properly restricts itself in regard to the local limits of its application to the country of a newly defeated King.

The sages of Hindu Jurisprudence have devoted considerable attention to that most important topic which relates to the annexation of a territory by conquest and the duties of the King in connexion therewith and the position of the subjects of such a territory and their rights and duties and properties I shall devote my attention to this subject which is of peculiar general interest and also of great special importance for the purpose of a full elucidation of the meaning of the text of Vishnu.

Under the Hindu system of Jurisprudence, विजित or conquest is an independent source of acquistion of property. Hindu Jurisprudence does not, like the Roman, regard the property of the enemy as *res nullius* and never permitted the conqueror to deal with the property of the vanquished

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lays down the Hindu law to be "that a King by his conquest acquires only the right of receiving revenue from the subjects of the conquered territory in relation to the property lying within it, which has devolved upon them by inheritance or otherwise[1]"

Reference may be made to the view of Goutama[2], who lays down that Kshatriyas are only entitled to unclaimed properties acquired by conquest. This at any rate limits very considerably the unqualified right of ownership which the text of Vishnu appears to promulgate, but, the most conclusive text, negativing the theory of royal mines in a conquered territory, is found in Yajnabulkya[3]—who says—

य एव नृपतेर्धर्म्मः स्वराष्ट्र परि-पालने ।
तमेव कृत्स्नमाप्नोति परराष्ट्रं वश नयान् ।

This text is a conclusive authority on the rights and duties of the sovereign in relation to a conquered country; that venerable sage enjoins that a "King bringing under his control a foreign territory becomes subject to the very same duties as are cast upon him in protecting his own State" Remembering in this connexion the principle of Hindu Law that a conquering King is simply vested with the rights and duties of

1 (Dr Sen's Hindu Jurisprudence P 61)

2 Chapter, X

3 Achara, 342

the conquered King and that private rights are not in the least affected by the conquest, let us try to define the idea of Vishnu in the passage.

The King, it seems, became invested with the rights and obligations of the conquered King and he acquired the right, so far as a mine was concerned, to receive all the revenue which the conquered King obtained from the mines, by implication, having regard to the immediately preceding sloka[1], it may be suggested that this sloka contains an injunction against the King s making a voluntary donation of this right of realising revenue to any person whomsoever The rm निधि therefore refers to all the rights the conquered King in respect of the mines and in the view I take, cannot possibly indicate that the King became invested with the ownership of the entire produce of the mines of the "conquered territory This interpretation appears to be in consonance with the acknowledged theories of Hindu Jurisprudence on the subject of the extent of the right of a conquering King in the territory of a vanquished sovereign and there is no cogent reason to suppose that Vishnu took a view as to the King s right in such a c[illegible] d to the acknowledged

Vishnu '

principles of Hindu Jurisprudence; and there cannot be the faintest doubt that such was the King's position in the Hindu system so long as that system was in vigour; it would further appear from a Sloka in the Ramayana[1]—where is laid down in no doubtful language the primary principle which should move the King into actions—that the King should not do anything impelled thereto by mere desire or liking or in prospect of gain, but all his activities are to be regulated by *Khastra Dharma* or the duties of a Khastriya[2] I have already drawn the reader's attention to the prescribed duties of a Khastriya and there is no foundation there for private commercial engagements. Moreover, the King should appropriate only such things as are his legitimate dues.

Besides meaning "mines" the word *Akara* bears other meanings and the commentators frequently employ such other meanings for explaining passages where that term occurs for instance[3] —

तेषामर्थे नियुञ्जीत शूरान् दक्षान् कुलोद्गतान् ।
शुचीनाकरकर्मान्ते भीरूनन्तर्निवेशने ॥

Buhler himself translates this Sloka as follows —

1 (Kiskindha, 17th Ch Slo 32)
2 (Maha, Santi, 71 Ch Slo 6).
3 Manu VII 62.

part of the public administration of the country[1].

Now from the above evidence, it is quite clear that in ancient India the King had to construct granaries, weapon-houses, and treasure-houses and to keep them always filled with stock.

So, another interpretation of the Sloka आकरेभ्य सर्व्वम् आदद्यात् is possible and I may suggest that to be the more appropriate one, having regard to the whole tenor of the idea of Hindu Jurists on the present topic.

I submit, therefore, that the text of Vishnu means that the conquering King is entitled to appropriate the entire contents of the store-house for grains, weapons, treasures and machines etc. of the conquered King. If this meaning is accepted (and there is no valid reason why it should not be accepted), the perplexities which have gathered round the interpretation of the text vanish and we find ourselves on a somewhat surer ground as regards this enigmatical text of Vishnu.

It may be objected that if *Akara* in the Sloka आकरेभ्य सर्व्वम् आदद्यात् be taken in the sense of store-house for grains, weapons etc, then what would be the meaning of

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1 (J. R A S 1901, p 861)

the Sloka[1] where the same term is employed viz आकरप्रभवता नागकर्मिकान्तान् नियुञ्जीत ; *Akara* cannot possibly bear any meaning except mine in this passage and the commentators and Dr Jolly take it in that sense, and this is consistent with the orthodox position of the King as the mere revenue-receiver from the mines

Now, therefore, as the result of the previous discussion, we arrive at the position that the King's right was limited to the realisation of revenue, under the *Shastric injunctions, from the mineral* produce of the country

It is clear, however, that the above position does not sensibly extricate us from the difficulties suggested by the problem of the ownership of minerals under the soil

The Sage Manu in Ch VIII has in course of laying down the law on the subject of articles lost by the owner and found by a stranger or the King's servants and of treasure trove ordains in Sloka 39 that the King being the *Adhipati* (lord) of the land shall appropriate अर्धभाक् of ancient hoards and metals found in the ground by reason of his protection and because he is the lord of the soil This is Buhler's version of the Sloka This Sloka in the context in which

1 (Vishnu 3 Ch [illegible])

it appears seems to supply a reason for the appropriation of treasure-trove by the King, but does not distinctly raise the question of the ownership of minerals under the ground and cannot be cited in support of the proposition that the King is the owner of all underground minerals. But Buhler's translation is not the only possible meaning which the Sloka may bear, for Kulluka's rendering is quite different and distinctly raises the question of mines. The Sloka runs as follows :—

निधिनान्तु पुराणानां धातुनामेव च क्षितौ ।
अर्द्धभाग रक्षणात् राजा भूमेरधिपतिर्हि स ॥

This Sloka has been translated by Buhler in his edition of Manu in the "Sacred Books of the East" Series in the following way :—

"The King obtains one half of ancient hoards and metals (find) in the ground, by reason of (his giving) protection (and) because he is the *lord of the soil*".

The term अधिपति in this Sloka of Manu has been rendered by Buhler as lord , but a more appropriate rendering of the term, अधिपति consistent with the position of the King as the supreme head of the administration is overlord ; and the term has been so rendered in the Cambridge History of

India[1] I need hardly draw the reader's attention to the difference which exists between the meanings of the words lord and overlord and to the difference between ownership and overlord-ship

This rendering, if it were beyond critisism—the only correct rendering of the above text, shatters the theory of the *royal* ownership of mines, since the translation does not even show that the metals found are discovered in the mines, perhaps a casual find of metal is what, according to this great authority, the Sage Manu must have meant and possibly, having regard to the fact that mines were non existent in Madhya Desha, this interpretation seems to be correct and in this view Manu is no *authority* for upholding the doctine of royal mines. But other interpretations are possible and I shall try to discuss the other probable senses of the Sloka

The Scholiast Kulluka in his commentary on this Sloka takes the expression [illegible] to mean [illegible] and consequently in the opinion of this great commentator of Manu, the whole passage when rendered into English would stand as follows —

1 (Vol 1 P 108)

"Of hoards anciently concealed under the earth and not known as belonging to a learned Brahmin and of gold and other metals obtained from mines, let the King appropriate half, since he protects and is also overlord of the soil".

In these circumstances, though personally I am inclined to prefer the rendering of the great oriental Scholar Buhler, yet the meaning of perhaps the greatest of the commentators of the Manu Smriti deserves our serious consideration and I accordingly proceed to discuss the text in the light of Kulluka's interpretation

The process of reasoning upon the application of which the text quoted above may support the theory of the royal ownership of mines may be stated in the following way[1] —

(a) The King is the overlord of lands as well as protector of all things

(b) Metals (minerals), are found in or under the land.

(c) The King is entitled to the underground minerals

Upon a consideration of this text, it would appear that apparently two reasons are put forward by the great sage for the

1 (Manu Ch 8 Sl 39).

King's right to the appropriation of *half* of the minerals raised from under the ground They are —

(a) He is the lord of land (or over-lord)

(b) He is the protector ,

The second reason obviously refers to the King's position of political supremacy in the state by virtue of which in all the ancient and modern kingly forms of Governments, the duty of protecting the subjects from external invasion or internal discord is cast upon him , and it is on account of this protection that the subject owes allegiance to the sovereign This is ascribed by many political philosophers as the ground for the royal prerogative to impose taxes upon the subject. Hindu Jurists were obviously familiar with this principle and if this be so, the necessity for supplying a second reason for allowing the king a *half* share of mineral products does not appear to be clear unless the two apparent reasons in truth constitute only different forms in which the same notion of the royal supremacy had been expressed by Manu

But to my mind the idea involved in the expressions रक्षणात् and भूमेरधिपतिः points to the same notion and evidently refers to the

King as the ruler of the country and not to the King's position as the owner of the land; for overlordship of land is but an appropriate function of rulership of the country. It is not at all difficult to understand that in Hindu Jurisprudence a line was drawn between ownership and rulership, between private right and public power.

The half goes to the treasury, to the King who is, indeed, the Governmental power of the sovereign state To attribute proprietary rights of a supreme landowner to the King was absolutely foreign to the ideal which Hindu Jurisprudence has formed for the individual who has to wield the supreme Governmental power. To the Hindu Jurists the King is a symbol for the public power of the State; and evidently, they found a good deal of real difference between tax and rent. Therefore, even if Hindu law compelled the subject to deliver over to the Governmental power of the State half of the out-put of the mines, that does not necessarily involve a negation of the subject's ownership of the mines.

CHAPTER IV

The Technical Significance of the term भूमि in Hindu Jurisprudence

I have tried to put forth in the form of a syllogism the necessary logical implication of the proposition that the King is the lord of the land, but if by virtue of the fact of his being the lord or overlord of the land, the King were allowed by Hindu Jurisprudence to appropriate the minerals, then the term भूमि clearly denotes something wider than the surface of the earth and must be regarded as having the broader import of including the subsoil

Therefore, the question arises what is the legal idea which the Hindu Jurists associated with the term भूमि Had it any technical sense attached to it? or does it bear the ordinary lexicographical sense and is but one of the numerous synonymus words such क्षिति पृथ्वी भू etc The term भूमि may be fittingly translated by the term soil or land and also country The term land when used in a legal sense has a very techincal meaning Lord Coke has defined the term land as employed in the English legal system in the following words —
'Land in the legal signification compre-

hendeth any ground, soil or earth what soever ; as meadows, pastures, moores, waters, marishes, furses and heath. It legally includeth also all castles, houses and other buildings . for castles, houses etc consist upon two things, viz, *land* or ground, as the foundation and structure thereupon , so as passing the land or ground, the structure or building passes therwith[1]" "Land hath also in its legal signification an indefinite extent upwards as well as downwards Cujus est solum, ejus est usque ad coelum, is the maxim of the law, upwards , therefore, no man can erect any building, or the like, to overhang another's land And, downwards, whatever is in a direct line between the surface of any land and the centre of the earth belongs in general to the owner of the surface[2]". So that the word land includes not only the face of the earth, but every thing under it or over it[3].

Therefore, land has in legal sense an indefinite extent upwards and downwards And the word "land" includes not only the face of earth but everything under it or over it. so that under the English system of

1 See Co Litt 4a

2 Stephen's Com Vol 1 p 94 (14th Ed)

3 Shep Touch p 90

where the term has been employed. In the absence of a definition, the task of investigating the precise sense of the word भूमि becomes supremely difficult ; but, the task must be undertaken in order to fully understand the meaning of the word as employed in the *sloka* of Manu where in the same *sloka* we find two expressions

(a) धातुनाम एव च क्षितौ

(b) भूमेरधिपतिर्हि सः

It would not be unreasonable to suggest that the two words क्षिति and भूमि which might bear the same significance as indicated by the word पृथिवी have not been employed in this passage in that one sense ; quite probably, the term भूमि has been employed here in the second sense attached to the word, viz ground or soil , in this view I think it is quite proper to translate the two passages from the *sloka* of Manu Ch 8-Sloks. 39 as follows —

(a) of metals found under the earth

(b) He is undoubtedly the over-lord of the ground or soil

It is obvious that the term क्षिति in the above expresion of Manu bears the simple non-technical geographical sense of earth or पृथिवी

To my mind by the word भूमि the Sage emphasises the position of the king as

overlord in relation to the soil or ground or land of the country, *i e* brings into pro minence his position of internal supremacy as the arbiter of the internal disputes and disturbances amongst his subjects and evidently does not refer to the king s posi- tion as the supreme protector of the country against external foes, *i e* to his postion of political supremacy or international sover- eignty If the international position of the king was intended by the Sage Manu, undoubtedly a word clearly signifying the whole dominion in a political sense ought properly to have been employed I think the term राष्ट्र which means the country viewed in its political relation to the king as a member of the international system might have been the proper word

It may therefore be concluded that in this passage the word भूमि does not mean the earth but surely means the soil or ground or to employ its English equivalent *land*

Now upon the assumption that this reas soning is correct there cannot be the slightest doubt that the term भूमि also inclu des the soil under the surface for it stands to reason to believe that the Sage has given a share the स्वत्व of minerals to the *Adhipati* or overlord of भूमि in the sense of the surface of the ground

Neither is this wider meaning of the term unknown to the Sanskrit literature. On the other hand, it was a very common significance of the term as would clearly appear from the lexicon राजनिर्घण्ट, the learned lexicographer has given the synonymous expressions for *Subarna* ; let us quote the exact words of the lexlcographer here —

तवैकं रसवेधज तदपरं जात इय भूमिज किञ्चस्तहङ्गु नीहसङ्करतां चेति त्रिधा काञ्चन

Now, therefore, it is clear that the name of the mineral gold found under the earth is भूमिज Sanscrit legal writers also employ the term भूमि in the same sense in which it is employed in English Law , in this connexion reference may be made to Kamandakiya Niti-Sastra , the Sage says that the *Rastra* becomes endowed with wealth by reason of the quality of भूमि and the king attains splendour when the *Rastra* becomes wealthy ; therefore, in order to attain splendour, the king should improve भूमि and thereafter the Sage directs the king to choose lands (भुवः) abounding in crops and mines, merchandise and minerals, grazing grounds, plentiful water, sacred towns, beautiful elephant forests, water and land routes, and numerous natural streams for improvements.[1]

1 (Slokas 50-56 of the 4th Chapter)

From the above slokas, it is quite clear, that आकर was considered a part of भूमि or land and this is only possible if भूमि is used in the sense of including the sub-soil also, I, therfore think that Kamandaka in applying the adjective सर्वाकरवती to भूमि must have used the term भूमि or भू in the same technical sense in which we find the term land employed in the English legal literature

The author of the Brahma—Baibarta Purana while describing the birth of the Prithivi gives a description of Bharatbarsha and there occurs the following Sloka —

पुण्यतीर्थ समायुक्ता पुण्यभारत संयुता ।
काञ्चनी भूमि संयुता सर्व दुर्ग समन्विता ॥

From the above sloka it is quite clear that the author employs the term *Bhumi* to include also the sub-soil since he describes the country as काञ्चनी भूमि संयुता (with land containing gold) if this be so, there cannot be the faintest possible hesitation in holding that in Sanskrit the term भूमि also included the sub soil

That it means and includes the surface of the ground is beyond any doubt whats oever and there are common words in use in Sanskrit which show this sense For

Brahma Baibarta Purana I K. Chap VIII 18

example, take the word भूमि चम्पक:, which the Sabdakalpadruma defines as भूमिजात चम्पक: वृक्ष विशेष: भुइचांपा इति भाषा. It is clear, therefore, that the term भूमि in Sanskrit bore the same significance which the term land has in the English system of Jurisprudence and therefore it becomes a matter of ordinary construction to determine its exact sense in any particular passage

Thus, it is evident that in the Sloka of Manu quoted above, having regard to the context, the term भूमि means and includes also the subsoil and therefore in popular untechnical language the meaning of the expression भूमेरधिपति हि स is—' He is the overlord of both the surface and the *subsoil.*

So long I have confined the discussion only to the 39th Sloka of Manu Ch 8 and I suggested that one of the reasons for holding the term as meaning soil or ground was that here the Sage laid particular stress on the internal supremacy of the king in his character of master of particular portions of the country or the ground or soil and therefore, instead of the term राष्ट्र which pointedly shows the King's relation of supremacy in the country considered as a political unit in an international sense, the term भूमि had been employed.

Texts in large numbers may be cited to illustrate the point. It is highly necessary for me to place before the reader some passages from recognised Sanskrit authors to show that the word राष्ट्र and भूमि are employed to emphasise the one or the other branch of the relation of the king to the country over which he rules

The term राष्ट्र *is employed in many places* by the writers on the Political science of the Hindus. I will take some examples to illustrate the conception of राष्ट्र in Hindu legal and political literature

(a) भिन्नं राष्ट्र बलं भिन्नं भिन्नोऽमात्यादिकोऽखिल ।
अकौशल्यं नृपस्यैतन्नीतिहीनस्य सर्वदा ॥

Sukra, Ch 1 Sl 19

The different parts of the dominion (राष्ट्र) force and ministers of the King fall separated from him who always betrays want of skill in diplomacy

(b) राष्ट्रस्यैतत् कृत्यतमं राज्ञ एवाभिषेचनम् ।
अनिन्द्रमबलं राष्ट्रं दस्यवोऽभिभवन्त्युत ॥

Mah Santi—67 Ch 2 Slo

It is the foremost duty of the people in the dominion (राष्ट्र) to install their king for the robbers surely overpower weak and kingless country

(c) अराजकेषु राष्ट्रेषु धर्मो न व्यवतिष्ठते ।

Maha, Santi 67 Ch 3 Slo,

In kingless countries Justice (धर्म) does not prevail

(d) [illegible]

[illegible]

Mah. Santi—67 Ch. 5 Sloka.

It is not properly desirable to live in kingless countries, (for) in such countries fire does never carry the sacrificial Ghee (to the Gods)

(e) [illegible]

[illegible]

Maha. Santi. 67 Ch Slo. 6

When a powerful king desirous of conquest enters a kingless (disordered), powerless kingdom, he should be respected.

(f) एवं हि भविता राष्ट्रं यत्र राजा न दृश्यते ।

Ramayana, Ajodhya, 14 Canto. 55 Sloka.

Such becomes a country where no king is seen

(g) यथा ह्यनुदका नद्यो यथा वाप्यतृणं वनम् ।

अगोपाला यथा गावस्तथा राष्ट्रमराजकम् ॥

Ramayan, Ajo. 67 Canto Slo 29.

Just as a river is without water, and like a forest divested of grass, and like cows without cowherds, such is a country (राष्ट्र) without a King

(h) स्वाम्यमात्यौ पुरं राष्ट्रं कोशदण्डौ सुहृत् तथा ।
सप्त प्रकृतयो ह्येताः सप्ताङ्गं राज्यमुच्यते ॥

Manu, 9 Ch Slo 294

The seven component parts of a kingdom are enumerated thus King (protector), minister, palace, dominion, treasury, punishment (दण्ड) and friends

(i) यथा दृष्टिः शरीरस्य नित्यमेव प्रवर्तते ।
तथा नरेन्द्रो राष्ट्रस्य प्रभवः सत्यधर्मयोः ॥

Ajo 67 Can 33 Sloka

As the eye always turns towards the welfare of the body, so also the King as the inaugurator of truth and justice (looks towards the welfare of the kingdom)

(j) धर्मेण राष्ट्रं विन्देत धर्मेणैवानुपालयेत् ।

A dominion should be acquired rightly and the same ought to be justly (*i e* according to the rules of justice) ruled

(k) राज्याङ्गानां समस्तानां राष्ट्राद् भवति सम्भवः ।
तस्मात् सर्वप्रयत्नेन राजा राष्ट्रं प्रसाधयेत् ॥

The component parts of a kingdom become possible from (राष्ट्र) so the king should protect the राष्ट्र with all diligence (Here a distinction has been drawn between a (body स्वाम्यादि राज्य and dominion देश राष्ट्र which is called राष्ट्र

(l) अष्टौमासान् यथादित्यस्तोयं हरतिरश्मिभिः ।
तथा हरेत्कर राष्ट्रान्नित्यमर्कव्रत हि तत् ॥

Manu, 9ch. 305

As the sun takes away watery substance (by degrees) throughout the course of eight months, so the king, like the sun अर्कव्रत should collect revenue (slowly) from his Government (dominion—राष्ट्र).

(m) कच्चित्तुष्टा कृषीवला
कच्चिद्राष्ट्रे तडागानि पूर्णानि च बृहन्ति च ।

Mahabharata. Sabha 5-76-77.

The King should keep the cultivators satisfied, he should arrange the digging of wells and big tanks in places by division and see that these places are full of water. The cultivation should not depend on chance alone (दैव मातृका)

(n) तथारचन्नृपोराष्ट्र हन्याच्च परिपन्थिन ।

Manu 7th ch, 110

So the king should govern his kingdom (—राष्ट्र) by exterminating the opposite (enemies to the people).

(o) अमात्यराष्ट्रदुर्गार्थ दण्डाख्य. पञ्चचापरा ।

Manu, 7th, 157

And the five others called Ministers, dominion राष्ट्र forts, wealth and force.

(p) स्वराष्ट्रे न्यायवृत्तः स्याद्भृशदण्डश्च शत्रुषु

In his own government नृपः (the king) should be just (pursue the path of justice), and towards his enemies very powerful

(q) सांवत्सरिकमाप्तैश्च राष्ट्रादाहारयेद्बलिम् ।

Manu, 7th 80

Paddy should be collected from the dominion at the end of the year

The above texts, I have collected at random from the authoritative works to which references have been given These diverse texts may be fairly taken as expressing the sense in which the term राष्ट्र is employed in the Sanskrit literature

I have attempted to give as literal a rendering of these passages in English as is quite compatible with keeping uninjured the true sense of the texts

Now then the significance of the term राष्ट्र in all those passages is quite evident and cannot possibly be anything but the idea conveyed by the word State which denotes something radically different from either the colourless term country देश or land भूमि It is essentially the country considered as a member of the community of international persons possessing the marks of political sovereignty in addition to the juristic

The same *State-idea* is also very appropriately conveyed by other words in the Sanskrit language which also clearly indicate that the conception of राष्ट्र proceeds from an altogether different point of view employed in looking at the territory The Kasmirian Commentator of Manu. Medhatithi, while explaining the word "*Swarastra* ." occurring in Manu VII—Sl 32 and the term *Janapadah* occurring in VIII. Sloka 41 of Manu as signifying Kingdom and country respectively, introduced by way of illustrating his sense, the name Kashmir an independent sovereign-country in the days (probably 9th Century A D) before the Mohamedan conquest of the Kasmirian Valley and thus indicated the technical sense in which those terms were employed in ancient Sanskrit literature.

The following texts may be cited for clearing up my meaning.

(a) [illegible]

[illegible]

Maha, Santi, [illegible] Ch. [illegible]

(b) [illegible]

[illegible]

Rama A[illegible]

(c) [illegible]

[illegible]

Manu [illegible] 41

(d) राष्ट्रीयत्तागमपरिक्लिष्टः राजपुरुषाः ।
जनपदो क्षीयते तस्य किल्बिषं महत् ।

Maha, Santi, Ch 97, 24,

There are a large number of Slokas in the same Chapter of the Ramayana, where the term जनपद has been employed to indicate the sense of राष्ट्र and a translation of the texts cited above might serve to bring forth the state-idea contained in the term —

(a) That king is firmly established (deep rooted) whose people are prosperous and who is most beloved, self satisfied and surrounded by ministers

(b) In a kingless (disordered) country, a cloud, while giving out flashes of lightning and high sounds does not pour upon the earth heavy rains (showers)

(c) A dutiful king after investigating the laws of castes, countries, guilds and families shall lay down his own rule of conduct.

(d) The king in whose country जनपद there are numerous officers of state is bound to be effaced and he incurs great sin

We think we may now safely conclude that the term भूमि is employed in Sanskrit politico legal works in the sense of soil or land and the 'country' in the sense of the *State* used to be expressed by the favourite

term राष्ट्र most generally and sometimes such other word as जनपद

The technical sense of भूमि meaning soil or land is emphatically brought out in the following texts —

(a) सत्यं पालयतिप्रीत्या नित्यं भूमिं प्रयच्छति।

Maha, Santi, 91 Ch. 40.

(b) धर्ममेव प्रपद्यन्ते न हिंसन्ति परस्परं
अनुगृह्णन्ति चान्योन्य यदि रक्षति भूमिप ।
यजन्ते तु महायज्ञैस्त्रयो' वर्णा. पृथक्विधौ
युक्ताश्चाधीयाते विद्यां यदा रक्षति भूमिपं ॥

Maha, Santi, 68 Ch Sl 37—38.

(c) प्रतापकालमधिकं यदा मन्येत चात्मन. ।
तदाभियेत मेधावी परभूमि धनान्युत ॥

Santi, 94 Ch Slo 7

(d) लज्जावान स्यात् स्वयूथ्येषु भौमानि चरणं. क्षिपेत् ।

Maha Santi, 120 Ch. 10

(e) कच्चित्सर्व्वेऽनुरक्तास्त्वां भूमिपाला. प्रधानत. ।
कच्चित् प्राणां स्तदर्थेषु सत्यजन्ति तया हृता ॥

Maha, Sava, 5th Ch , 95

(f) न यस्य कूट कपटं न माया न चामत्सर ।
विषये भूमिपालस्य तस्य धर्म्म' सनातन' ॥

Maha, Santi, 57 Ch —37.

(g) ज्ञातिसामन्तधनिकां क्रमेन भूमिपरिग्रहान ।

Artha Sastra, Book. III, Ch. 9.

(h) आसीनस्त्वासने शुद्धे भूमौपादौ निधापयेत् ।

Usanar Sanhita 3 Ch.—93. Slo.

(i) नदीतीरेषु तीर्थेषु स्मशानी विविक्तेषु ।

Unsanar Sanhita, 5th Ch,—14.

(j) परस्य भूमिसार्वे तु पितृणां चैव निर्वपत् ।

Usanar, 5th Ch 15 Sloka.

(k) भूमीनिक्षिप्य बक्षासमलबीपवरा पवि ।

Angira, 151 Ch 42 Sloka.

(l) पाश्चिमो बक्षीभिषमोषा सोमी हताग्न ।
पदमाचिषु मबपास्मिन्दनि भूमिदम् ।

Atri Sloka 330

(m) भूमिं समापती में ता सान्नमे वैवपावै

Sambarta 33 Sloka

(n) न चैव प्रक्षिपेद्भूमिं नाकर्मोदक्षेनृकमम् ।

Manu 4th 55

(o) भूमिनैभूमिमासीति शैलमाशुभिरवस

Manu, 4th 2

(p) चाप: सदा भूमिगता

Manu 5th 1

(q) बमेद्रुमस मावस भीम तिं करवाणि ष
भूपर्ष ..

Manu 6th 11

See also Manu, 6th Ch Sloka 22 7th Ch
Slo 8

(r) मनुनबदन गाद नर्पुश्वसपूर्ष्टे
तथात् गुणवतीं भूमिं भूमे भुवभुवालैन्

Kamandaka, 8th Ch 50 Sloka

(s) यमजुपतक्षिनु गिर्न बाबन नवा
पादपानां ददाबान बग भनिमर्त्य्मा ।

Sukra 2 Ch—158

(t) भूमिञ्च सर्व्वशस्याढ्यां ब्राह्मणाय ददाति य ।
भूमिरेणुप्रमाणञ्च वर्षं विष्णुपदेस्थिति ॥

(Brahma-Baibarta Purana, Prakriti-Khanda 9th Ch. Sloka. 5.

See also the following Slokas in the above chapter of Prakriti-Khanda—14, 15, 18, 19, 20, 22, where the term Bhumi is employed in the technical sense meaning, in the context, merely the surface of the earth.)

It is needless to multiply examples where the authorities have used the word भूमि as a technical legal term to indicate what an English lawyer would signify by the use of the term land The extracts, quoted above will clearly show that in these passages stress is laid solely on the internal relation of the King with his subjects and भूमि is regarded as an object or instrument of economic gain or land in its technical legal sense.

Again, proprietary rights in land may be considered and examined from two different points of view. Land—rights, in the first place, may be viewed from the stand-point of public law and as forming the frame-work of the state ; they may as well be viewed and examined from the view—point of private law as a mesh of private rights and duties.

Two great English Jurists of recent times have discussed the problems of proprietary rights in land from the two points of view mentioned above These great authorities claim to have made the distinction themselves, they write "this distinction is one that we make, rather than one that we find made for us (P & M, History of Eng Law Vol II p 1)

The jurisprudence of Europe might not have perceived the distinction noted above before the end of the 19th century of the Christian Era but, the sages of ancient India were undoubtedly familiar with the distinction so assiduously worked out by Messrs Pollock and Maitland

The texts which have been quoted above certainly indicate how in ancient India the jurists thoroughly got hold of the two stand points from which proprietary rights in land might be examined

That much quoted Sloka of Manu

निधीनां तु पुराणानां धातूनामेव च क्षितौ ।
अर्धभाग्रक्षणाद्राजा भूमेरधिपतिर्हि सः ॥

Ch 8, Sl 39

furnishes an apt illustration of the matter in hand Hindu Jurisprudence as I have shown above did not allow the head of the state any private proprietary rights

in land nor did it permit him to engage in private commerce for personal gain. Therefore in relation to the king भूमि or land can only be viewed from the stand-point of public law as supplying the revenue to uphold the frame-work of the state.

Consider, again, the Sloka of the Artha-Sastra

ज्ञाति सामन्तधनिकाः क्रमेण भूमिपरिग्रहान्

Artha Sastra Book III Ch. 9

Here undoubtedly, the jurist has been considering the problem of inheritance of land from the stand—point of private law as a mesh of private rights and duties.

It is obligatory upon us to keep this circumstance in view; for, thus are we able co understand the position of the king in regard to the land of the kingdom over which he rules. His right to receive revenue only from land can then only be scientifically explained as based on his position of the greatest public functionary of the state. If we remember this distinction, we shall never fall into the err of suppossing that the king in ancient India was ever the owner of land as a subject of private proprietary rights.

Now, upon a comparison of the words राष्ट्र and भूमि it is abundatly clear that in

Sanskrit, where the writer wishes to emphasise the politico-sovereign character of the royalty or the State, he uses the term राष्ट्र or जनपद and on the other hand where he wishes to designate the King in his relation to the subject as the symbol of internal or juridical sovereignty, or roughly in the character of a big land-lord so to say, he employs the term which bears the technical sense of *land* as employed by an English jurist.

This, I submit is a very *important* consideration and an oversight of this feature of the juridical character of the word भूमि has been fraught with important and far reaching consequences in the history of the right to underground minerals in *Modern* India.

It is to be noted here that in ancient India there were countries governed by systems which resembles the republican form of Government of modern times and in connexion with such states as were ruled by autonomous corporations the authors of political works employ the term जनपद[1]

1 See Bhandarkar's Carmichael Lectures 1918 Lect 1

CHAPTER V.

The Ancient Rule in regard to Mineral Rights

After this pretty long discussion let us revert to the Sloka of Manu

निधीनान्तु पुरानानां धातुनाम एव च क्षितै ।
अर्द्धभाग रक्षणात् राजा भूमेरधिपति र्हि स. ॥

As I have before indicated, in this sloka two reasons are assigned by the sage for the King's right to appropriate *Half* अर्द्धभाग of metals in the mines. Here the two separate reasons bear as a matter of fact the relation of one being subordinate or accessory to the other and the principal reason is contained in the term रक्षणात् which is strengthened by another reason viz-over-lordship derived from the fact of रक्षण of the भूमि, a character inherent in the conception of sovereignty.

Postponing for the moment the discussion of the nature of the King's right to the land or भूमि of the country, let us see what is the extent of the portion of the minerals raised from the ground which the King is entitled to appropriate as his share. The text says अर्द्धभाग रक्षणात् राजा

What is the meaning of the expression अर्धभाग? Is the king entitled to appropriate an exact half of the minerals as his own royal share? Or in other words does the word *Ardha* bear any other significance say, a fraction, a part only of the mineral produce greater or less than an exact half?

Let us first of all consider the different senses, if any which the word अर्ध bears in the Sanskrit tongue.

The lexicographer Amar Sinha has the following in his dictionary on the word अर्ध:— अर्ध अर्द् + घञ् समांशोऽर्थ समभाग इत्यमर here the word bears the neuter gender and means an exact half, then the learned lexicographer continues thus—अर्द् + घञ् (masculine) एकदेश: तत्पर्याय भिन्नं खण्डं शकलं in this sense the term evidently means a part only.

भित्तं शकलखण्डे वा पुंस्यर्धोऽर्धं समेंऽशके ।

Thus the question naturally arises in which of these two senses has Manu employed the vague term अर्ध in defining the portion of the produce of the mines due to the king.

It appears to me that Manu left the matter in an intentionally indefinite state; this may be ascribed to the circumstance of practical inutility of a fixed rule due perhaps to the non-existence or rather economic unimportance of mine working

in the Madhya-Desha where Manu appears to have flourished · then, again we must remember that that the Hindu Sages never tire of reminding the King that he is only entitled to his legitimate taxes and nothing but that , and in all cases the King must pay heeds to the customs prevailing in the kingdom[1] ; thus, it is reasonable to suppose that the great sage left the matter of the royal share of minerals to be determined by the varying mining customs of each locality, only laying down a reasonable maximum limit of the King's demand based on principles of equity and justice

It is quite possible that customs as to the share of the produce of the mines assessable by the King varied in different localities and in reference to which Manu's rule has been left so elastic It is not a violent conjecture to infer that Manu was but vaguely aware of any definite custom on the subject of the King's share of the mineral produce in Aryan India and there is solid reason to submit for holding that this must have been so, since all traces of ancient mineral workings have been found beyond the borders of the sacred country for the guidance of whose people the great sage appears to have promulgated his sacred code of Laws

1 (See Gautama Sanhita Ch X, 1., See Manu Ch 8 Slo 3),

As a matter of fact even any vague rule of this kind in relation to the king's share of the produce of mines is *absent from the* works of the other Sages who wrote for the pure Aryandom of the *Middle-country* (Madhya-Desha) We do not find the Rishis Yajnabalkya Vasistha, Gautama, Attri, Harita and others laying down any rule on this *topic*, but each *one of these sages* promulgates rules as to the King's right to treasure trove *This absence is very significant and* involves the position that this rule of Manu was concerned *only with the revenue legitimately* leviable from subjects engaged in the commercial exploitation of mines A different explanation of the rule relating to king's share might also be suggested It is well known that the existing Manu Sanhita is the last of the recensions through which that ancient code has passed and the date of the present work has been placed by the antiquarians in the 2nd century B C and *most probably the original work of the* School of the Manavas may have been composed at a considerably earlier century before the Christian era and one would not be far wrong in placing the work 500 or 600 years before the birth of Christ[1] This being

1 See Bhandarkar Carmichael Lectures for 1918, p [illegible] note [illegible]

so, it is quite probable that the sloka which is capable of being explained as upholding the theory of royal mines is an introduction of a later recension and was possibly a borrowing of the rule of Kautilya in a modified form, adopted by an Editor who flourished after Kautilya. But, the only possible time. when the Smriti writer or Editor would accept a rule like the one in question, advocating the royal ownership of mines. would be during the great Hindu revival of the 3rd or 4th century A. D So if we hold the view that this sloka has been taken in a modified form from Kautilya's Artha-Sashtra, we must accept Dr. Jolly's view as to the date of Manu (2nd or 3rd century A D)[1] But the acceptance of this date is open to great objection[2] ; and, moreover, this extreme explanation does not quite fit in with the scheme of Manu and I proceed to give another explanation which perhaps re concilles this passage with another in the same Chapter.

Manu and almost all the sages I have enumerated lay down a specific rule for the share of the King and make it 2 p c

1 See Cambridge History of India Vol 1 P 278

2 See Cambridge History of India, P 278 and 279

Manu says.

> पञ्चाशद्भाग आदेयो राज्ञा पशुहिरण्ययोः ।
> धान्यानाम् अष्टमोभागः षष्ठोद्वादश एव वा ॥

7th Ch Slo 130

(Buhler's translation runs thus —A fiftieth part of (the increments) cattle and gold may be taken by the king and the eighth, sixth or twelfth part of the crops

Slokas of corresponding import occur in the other Smritis e g Ap II 26, 9 , Gautama X 24-27 , Vasistha XIX 26 27 , Baudhayana I 1, 13 15, 18 Vishnu III, 22 25 and 29 30 , from these it may be reasonably inferred that the rule embodied in the sloka was an ancient common rule in Aryan India

Kulluka, in his commentary on this Sloka explains that of the extra proceeds over the capital employed in respect of trade in gold and animals, the King shall appropriate a two percent The commentary of Kulluka referred to above runs thus —

> [illegible]
> [illegible]
> [illegible]

Thus both the Eastern and the Western commentator of this sloka take the fiftieth part to mean a 2 p c on the profits of trade in respect of gold and animals But with

the greatest respect to these venerable authors. I venture to suggest that the text itself does not support the interpretation and the expression मूलादधिक्यो: in Kulluka's commentary and the words "the increment" in Buhler's translation, introduced by these commentators, have no corresponding words in the original text and the tax on the profit of trade in gold and cattle is not the subject—matter before the sage who has dealt with the topic of duty on profits of business just before this sloka and I think in the few slokas commencing from 7th Ch. 130 Sloka, has introduced the topic of revenue leviable either in *money or kind* from mining operations, agriculture, poultry farming etc from the persons actually engaged in these kinds of productive business as distinguished from dealers in those things

My meaning would be quite clear if reference be made to the three slokas immediately preceding and three slokas immediately following the sloka now under discussion, viz slokas 127-129 and also 131-133 of the 7th Chapter of Manu , I reproduce the translations of the above six slokas from Buhler and I believe the reader will at once be able to perceive what I desire to suggest if he peruses these slokas —

127 Having well considered (the rates of) purchase and (of) sale, (the length of) the road, (the expense for) food and condiments, the charges of securing the goods, let the king make the traders pay duty

128 After (due) consideration the king shall always fix in his realm the duties and taxes in such a manner that both he himself and the man who does the work receive (their due) reward

129 As the leech the calf and the bee take their food little by little, even so must the king draw from his realm moderate annual taxes

131 He may also take the sixth part of trees meat, honey clarified butter perfumes (medical) herbs substances used for flavouring food flowers, roots and fruits,

132 Of leaves pot-herbs, grass (objects) made of cane skins of earthen vessels and all (articles) made of stone

133 Though dying (with want) a king must not levy a tax on Srotriyas and no Srotriya residing in his kingdom must perish from hunger

I may here notice that slokas of similar import occur in the other Smriti works[1]

1 (See Ap [illegible] 10 Gautama X [illegible] Baudhayana [illegible] 13 15 [illegible] VII [illegible])

Now, it is quite clear that Slokas 130-132 empower the king to raise revenue on the actual produce of the soil or from the manufacturers of articles direct fra such produce, while the slokas 128-129 lay down the principles of taxation on trades and commercial undertakings i.e on the distribution of products. Upon the above interpretation of this sloka (VII-130) of Manu, it is possible that it may be reconciled with Sloka 39 of Ch 8.

Thus, sloka पञ्चाशद्भाग ...... द्वादश एव वा may be explained to mean simply, that as in the case of paddy (which stands for corns) the King shall take as his revenue either a sixth or a eighth or a twelfth part, so in the case of gold (which also might stand for all minerals) the King's share should be a fiftieth part So in this view, the meaning of the rule in Ch. 8 Sloka 39 of Manu would be that the King shall obtain only a fiftieth part as his revenue-share, taking अर्द्ध in the sense of a part

This interpretation is also corroborated by another text of Manu which I have already cited and explained in another connexion—I refer to sloka 62 of Ch VII where the King was directed to appoint officers for the collection of revenue from the mines, so that upon a comparison of

This sixth part was the share of the King for the service that he renders to the community and in the theory of Hindu Political Science this constitutes his wages The Sage Baudhayana, who flourished in the 5th Cantry B C, distinctly says that this is the King s sole title to receive revenue from his subjects The King has no ownership of any kind whatsoever in the soil or over the properties of the subjects The sage Baudhayana thus ordains —

Let the King protect subjects receiving as his pay a sixth part of their grains'[1]

In the Santiparva of the Mahabharata this theory is also put forward and in addition to the sixth part of the produce of the soil fines realised from the lawful administration of justice and taxes on merchandise are stated to be the King s (wages or pay) for the due administration of the country[2]

Sukra in his Niti Shastra a well known treatise on Political Science reiterates this aspect of the King s position in the administrative system—for the author lays down in vigorous and terse language —

The king justly and completely becomes the owner (of the revenue) by protecting (his subjects like a slave[3]

1 Baudh yana I 101
2 (See Maha, Santi 71 Ch. Slo 1 & 11)
3 Sukra, 4th Ch 1?

Neither can the King under the ancient Hindu Polity raise any illegal or arbitrary taxes from the people.[1]

The only legitimate conclusion seems certainly to be that the King in the Hindu System of Polity never wielded any unqualified power but was regarded merely as a public servant and could never, therefore, be supposed to be absolute.[2]

I have shown that according to the theory of the Artha-Shastra or the Political Science of the ancient Indians, the King was bound to act in respect of matters pertaining to the administration of the country according to the advice of a Brahman minister, assisted, as the Sastras also say, by a council and other appropriate officers.[3] If this is so, the question naturally arises, were not the ministers themselves under any responsibility to tender only lawful advice to the King or were they untrammelled? In other words, was there anything akin to the theory of ministerial responsibility in the Indian political system in the days of the Smritis and Sanhitas and Arth-Shastras? For, if you make it the

1 See Maha, Santi Sl 142 Ch 81, same 91 Ch Sloka 15-17

2 Bhandarakar, Carmichael Lectures, 1918, P 134

3 See Kamandaka 11 Ch 590, 520, Balmiki Lanka kanda 63 Canto 12 Sloka,

monarch's duty to act by the advice of the minister and make the minister irresponsible, it stands to reason to say that the government by the monarchical machinery was not absolute and irresponsible but truly limited Therefore, until it is established that the minister's duty was to tender such advice only as was lawful there is really no justification for suggesting that the kingship in ancient India was really of the type of what it called a limited monarchy

The selection of ministers is an important topic of discussion in the Raj niti Shastra of ancient India We find this subject discussed in the Mahabharata the Ramayana the Manu Smriti the Yajnabalkya Smriti the Sukra Niti the Kamandakiya Niti Shastra the Agni Puran and Kautilya's Artha Shastra amongst other works It would indeed be an interesting study to discuss the principles of ministerial appointments in Ancient India but our immediate view is to ascertain how far if at all a sense of responsibility was cast upon the minister by the authorities The authorities when carefully read do not leave any room for doubt that the minister was bound by the law to tender only such lawful advice as accords with the principles of Science and Dharma

A Minister amongst a host of qualifications with which he should be endowed must possess certain qualities which are eminently suitable ones for the efficient discharge of his duties according to law.

A minister must be versed in the Vedas and the art of war, skilful in the performance of duties, fast in duty in spite of passions, master of legal rules and of the true import of the Dharma Shastras. The advice tendered by a man qualified as above must, however, be such as would ensure the good of the country. A King is not bound to abide by the advice of a minister who does not know the Shastras and advises without understanding their meaning and a minister is liable to be banished who misleads by describing what is injurious to be really beneficial. A minister failing in his duties is liable to forfeit his properties and he is cautioned against making the King understand the reverse of the truth.

The result of the previous discussion centralises in the idea that in the ancient political system of India the King was, under the rule of law to which he along with the other classes in the community was subject, bound to realise as his share such portion of the produce of mines as the law enjoined him to appropriate as his

wages for the protection of his people and the Brahman who promulgated the law and acted as the minister was himself placed by that law again under the severest sense of responsibility to offer only lawful advice. This share of the King varied in different circumstances and it is stated in the Shastras that emergency taxation or realisation was heavier than that in ordinary times. We have further seen that this share of the King leviable upon the mineral produce was either some indefinite part or a 2 p.c., but we cannot definitely say what was the practice current; it is probable that the practice varied from country to country.

The indefinite [illegible] in Manu's text might be supposed to have been left so elastic with a view to facilitate the realisation of heavier emergent taxation and if this be so the definite 2 p.c. was the ordinary incidence of taxation on minerals as raw produce at the pit's mouth. *The occasion for an emergent* heavy taxation has been thus specified by Sukra Acharya in his political Science —

[illegible]

[illegible]

Sukra, I [illegible] 10

"The King when not in distress shall not increase his treasures by imposing higher rates of fine by way of punishment, share

of the *produce of land*, duties on merchandise, and imports on visitors of Sacred Tirthas and Devas".

Then again the same Sage says —

दण्डभूभागशुल्कानामाधिक्यात् कोशवर्द्धनं ।
अनापदि न कुर्व्वीत तीर्थदेवकर ग्रहात् ॥

Sukra, 4-2-9

"During the period when an army has to be maintained for the destruction of the enemy, the King shall impose special fines, duties and other taxes"

The term भूमि or land in Sanskrit jurisprudence includes both the surface and the underground, therefore, evidently, Sukra-Acharyya authorises the king to levy emergent heavier imposition on the mineral produce of the country.

Thus, the suggestion I put forward for the existence of two separate rules might admit of this explanation over and above the others which I gave above

It is clear, however, that the position that the King was entitled to a certain share of the produce of the mines does not really extricate us from the difficulties involved in the problem of ownership of minerals under the soil in Ancient India; for, it is quite legitimate to suggest that the King is in fact the owner of the mines and the share that he realises is in the nature of royalty

and not revenue Since the discovery of that epoch-making work of Kautilya, this position no longer rests merely upon the slender support of any rational hypothesis but is directly supported by the weighty authority of the greatest of the Political Philosophers of Ancient India who was a contemporary of the founder of the Maurya Dynasty and was his prime-minister also Kautilya writes that the government shall keep as a state monopoly both mining and commerce in minerals and must also undertake the working of mines which are state property Indeed according to Kautilya all mines in India of his time were royal mines Not only in regard to mines or minerals does Kautilya propound the theory of the royal ownership but he also formulates the view that the lands in the country belong to the king in ownership This as I shall try to show is quite a new note and breaks the harmony of the theories on these subjects entertained by authors who preceded and succeeded this great minister philosopher of Chandra Gupta the Great and to the solution of the question if the King was the owner of mines in India I shall therefore turn my attention later on

To understand the land system of ancient India is a task of no mean difficulty

and in a previous part I slightly touched the question of ownership of lands and broadly stated that out of the materials that have been brought to light two extreme theories emerge. Elphinstone, the historian would plead for a third one yet[1].

I must preface this discussion of the ownership of mines in India by again pointing out to the reader the position which was established in a previous part ; viz—the word भूमि in Sanskrit politico-legal literature bore the technical sense of land including both the surface and the subsoil , the orginal texts, which had hitherto been considered as confined to the question of the ownership of the surface by students who have investigated the subject of the ownership of the soil, do not surely bear such a restricted construction and when the authors of Sanskrit works speak of land they might be reasonably interpreted to have spoken of the subsoil also, provided the context did not offer any legitimate reason to the contrary. Indeed, a discussion of the ownership of land, therefore, logically involves a discussion of the right to the mines under the soil.

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1 (See P 23, Elphinstone's History of India sixth Ed)

The texts of Manu and Vishnu which I have discussed at length might, as I have shown be so interpreted as to support the theory of the ownership of minerals under the ground being vested in the crown, but I have attempted to show that this interpretation is not warranted, if regard be had to the scope, purpose, object, and the general tendency of the Brahmanic civilisation enshrined in the Smritis of Manu and Vishnu and also because another interpretation is quite pertinent and fits in with the general theory of the King's position as a mere receiver of revenues from the various sources available to him in accordance with the principles of Hindu polity

Postponing for a moment the discussion of the question of the ownership of land in India, I shall try to discuss another important topic which might reasonably claim our attention in connexion with those texts of Manu, Vishnu and other sages which have been the material of our work so long Now I have sought to establish the position that these Slokas though capable of an interpretation which renders them consistent with the orthodox theory of the Hindu Polity might also lend them to a quite different interpretation supporting the theory of the state-ownership of mines If this be the

true interpretation, the question naturally arises when were they possibly inserted in the Manu Smriti and the Vishnu Sanhita? To the consideration of this question, therefore, I should immediately turn my attention.

The definite result of the researches of Oriental Scholars makes it certain that the Manu-Smriti and the Vishnu Sutra in their existing form are but editions or redactions of some Original Dharma-Sutras of the Schools of some particular Vedic Sakhas or Charanas for whose guidance apparently these, like similar other Dharma-Sutras or manuals, were originally composed. The Manava-Dharma-Sastra in particular may be considered as a recast and versification of the Manava Sutra-Charana, a sub-division of the Maitrayaniya School which adheres to the Black Yajur-Veda[1].

Dr Buhler advanced the view and Prof. Julius Jolly concurred with him in holding that the bulk of the so-called Vishnu Smriti was really the Ancient Dharmasutra of the Karayaniya Kathaka Sakha of the Black Yajur-Veda. After an elaborate discussion Professor Jolly comes to the conclusion that the Vishnu-Sutra and the

1 S. B. E, Vol XXV, Int P XIX and XX. See, however, footnote No 2 at P 299, Vol I, Cambridge History of India.

Manu-Smriti must have been closely connected from the first and the original home of the school of Kathas of the Black Yajur-Veda to which the Vishnu-Smriti evidently belongs was situated in the north west i e in those regions where the earliest parts of the Vedas were composed and most *likely in the Panjab It is also reasonable* to hold that the Vishnu-Sutra, which is the Sutra of a Sakha of the Black Yajur-Veda which sprang up near the original home of Aryan civilisation in India may be far older than the mere Sutra Schools of the Black Yajur Veda, which have sprang up like the Apastamba School in Southern India, i e far older than the *fourth or fifth* century B C , thus it is *not* unreasonable to place the date of the original Vishnu Sutra in the 7th or 8th century B C[1]

And further the Vishnu Sutra nowhere refers to the nations of South India such as the Dravids the Andhras or the Yavanas and it shows no distinct traces of any acquaintance with the tenets of any other School of Philosphy except the Yoga and the Sankhya systems Dr Bhandarkar in his Carmichael Lectures for 1918 has discussed the question of the colonisation of Southern India by the Aryans and according to him

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1 [illegible]

the Aryan knowledge of Southern India must have dated from at least the time of the composition of the Aitareya Brahmana; but this knowledge was very meagre, since, Panini does not mention any South Indian kingdom or tribes except *Aswaka* and his age is generally considered to be about 600 B C. From these data, we may hold ourselves justified in placing the date of the composition of the Vishnu-Sutra to be 700 or 800 B C.

Dr Jolly has further established beyond dispute the antiquity of the majority of the rules of Vishnu by a comparison of the analogous passages of the Vishnu Sutra with the passages of other works of the same class, notably the Smritis of Manu, Yajnabalkya, Apastamba, Gautama as well as passages from several Grihya-Sutras, and the position has been satisfactorily proved that the author of the original Vishnu-Sutra has everywhere drawn from the same source as the other Sutra-kars viz the ancient traditions common to all the Vedic Schools This view is further strengthened by the theory of Prof Hopkins that there was in existence a floating mass of unwritten sayings of Manu some of which were incorporated with the Dharma-Shastra of the Manavas in its revision and others were

not[1] So, it is not improbable that there was a common stock of both ritualistic and secular rules which formed the basic material upon which the several schools of Vedic thought worked, and particular special rules elaborated by these different schools of Vedic Sakhas were added to the common rules and thus were composed the special books of the different Vedic Sakhas

The next question which demands our attention is the date of the composition of the original Manava Dharma-Sutra I cannot do better than adopt the conclusion which seems to me to be the reasonable result of the elaborate investigation of the numerous Scholars, both Western and Eastern who have devoted serious studies to the chronology of ancient Sanscrit literature Buhler Jolly, Max Muller, Weber Sir R S Bhandarkar and his distinguished son Dr D Bhandarkar, Mahamahopadhyay H P Sastri Dr G Jha have elaborately investigated the problem of the age of the composition of the Manava Sutra I am inclined upon a consideration of the evidence brought forward by the authorities (whose name I have cited above) to adopt 700 or 800 B C as the date of the composition of

1 Journal of the American Oriental Society V I XI I 257 etc

the Manava Dharma-Sutra In fact, I adopt the view which Dr D Bhandarkar suggests in his Carmichael lectures[1].

Therefore, we may hold that the original Sutra-works of Manu and Vishnu have been composed in the 7th or 8th centuries before Christ.

The next topic which claims our attention is to see whether the Slokas of Vishnu and Manu which relate to the King's right to the minerals were in existence in the original Sutras composed in such an early age.

Prima facie, the theory of royal mines in the Aryan India of the 8th Century B C. in the Punjab and its neighbourhood where the Maitrayanya School flourished[2] (Madhya Desha of Manu) fails to secure any rational support from the economic situation of the Punjab and the Madhya-Desha, which countries do not reveal to the laborious excavations of the geologists any traces of ancient remains of working of mines ; in fact, the existence of mineral ores in those parts of India, particularly such minerals as were specially prized by the ancients, viz gold,

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1 See Dr Bhandarkar's Carmichael Lect 1918 P 108 and compare Cambridge History of India, Vol 1 PP 278 and 279

2 S B E Vol VII Int P XXVII.

silver ore has not yet been proved I have already quoted the opinion of Dr Ball an eminent geologist to show that gold was procurable in the alluvial river deposits of Northern India in commercial quantities Mines, such as are now worked in modern Mysore, were not in existence in Northern India But, geological excavations have proved the traces of ancient mineral works under the soil in Southern India. From these data, I think I may justly conclude that the knowledge of mines as producing minerals was acquired by the Aryans of Northern India since they had come to be intimately acquainted with the peninsula of India south of the Vindhya Range and therefore after 700 or 800 B C Now this being so, we may infer that the texts of Manu and Vishnu supporting the theory of *royal* mines have been introduced into these works in some subsequent recension of these Sutras perhaps at the time when they were assuming their modern and existing forms by the incorporation of materials by Brahminical editors long after these Sutras were composed Mr Z A Ragozin in his Vedic India upholds the view that the industry of gold seeking was carried on in Ancient India by washing the deposits of river sands

of the auriferous regions of the Punjab[1] This fact may be further supported by the theory of the origin of gold as enunciated in the Brahman literature[2] Upon the above data it may be quite reasonably suggested that *Akara* (mine) was an unknown idea to the authors who might have written in the 7th or 8th century B.C.

This view is capable of further confirmation by a different chain of arguments. Oriental Scholars are of opinion that the Vishnu Sutra and the Manu Smriti must have been closely connected from the first[3]. The Vishnu-Sutra agrees very closely with the Manu-Smriti 'Of Slokas alone Vishnu has upwards of 160 in common with Manu and in far greater number of cases still; Vishnu's Sutras agree nearly word per word with the corresponding rules of Manu[4]: Similarly, the principal Sutra works of the Kathaka and Maitrayaniya Schools stand in a similar relation of close agreement as do their Sanhitas[5], further the original ingredients of the Manava-Dharma-Sutra and the Vishnu-Sutra betray a very close resem-

1 P 45, Vedic India

2 See Satapatha Brahman 2-1-1, Taittiriya Sanhita 1 1 3-3, Apastamba Smriti 5 1-5

3 See S B E Vol VII, Int P XXV

4 Jolly, S B E Vol VII Int P XXII

5 S B E Vol VII Int P. XXVI

blanco Thus, the Slokas of Manu and Vishnu, which proclaim the right of the sovereign to appropriate a portion and the whole respectively of the mineral produce, possibly had no place in the original Sutra works, the very difference in substance and in form of the two rules sufficiently indicates their late introduction into the Vishnu Sutra and Manu Sanhita respectively, further, Manu ascribes a reason while Vishnu is laconic This is simply due to the fact that there was no original rule in the Sutra works on this topic So, we can reasonably come to the conclusion that the rules relating to the royal mines in Ancient India found in these works are of late introduction and must have been done by some subsequent editor or editors of the original Sutras

Now there is no room for any legitimate doubt that the whole of Vishnu has been recast by an adherent of the God Vishnu Dr Jolly supposes this recension could not be placed at a higher antiquity than the 3rd or 4th century A D There is no corresponding Sloka like Vishnu's [illegible] and Manu's [illegible] in the Smriti literature and Slokas relating to the King's special share of the mineral produce appear at a later date than even the beginning of

the Christian era, The Artha-Shastra of Kautilya which appears to be an encyclopedia alike for the government and the subject in respect of the acquisition of material prosperity, however, emphatically denies that the king's right in regard to minerals is of the same character as his right to levy taxes from the subjects according to Shastric injunctions discussed by me. Kautilya, the reputed author of this great work, therefore, propounds his theory of the sovereign's ownership of both land and minerals in the territory.

Rules of Kautilya regarding mines and minerals, being so strikingly different from the ancient rules of law on the subject of mines and minerals, claim our special consideration

CHAPTER VI

Kautilya and the Law of Minerals in the Artha-Shastra

There is a general consensus of opinion amongst scholars that this famous work of Kautilya which was looked upon as entirely lost, belongs to the period *B C 321—296* and the claim of Kautilya in this respect is borne out by a passage in his work and his treatise must have been composed between the two dates metioned above[1], He was the prime minister of Chandra Gupta the 1st Maurya Emperor of India, Kautilya himself says that having followed all sciences and having fully observed forms of writing in vogue, he laid down these rules[2] (in Ch X) of writing royal writs for the benefit of *Narendra* and it is sure he means the Maurya King Chandra Gupta whose minister he was. This statement of Kautilya is supported by Dandi[3] who stated that the revered teacher Vishnu Gupta composed the Artha Shastra in the interest of the Maurya King

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1 See however Keith's view in *J R A S 1916*

2 Kautilya Bk [illegible] Ch

3 Dasakumaracharita II 8

Thus, apparently towards the end of the 4th century B C or the beginning of the third, Kautilya composed his famous work on Hindu Polity which contains some rules that evidently support the theory of the royal ownership of mines in the Maurya empire[1].

The specific rules on the subject are a few in number and before entering upon a critical examination of these rules, I take the liberty of citing the passages of the Artha-Shastra where they occur. I have taken the translations of the passages of the Artha-Shastra which I have quoted below, from Dr Sham Sastri's edition of the work.

The King is directed to carry on mining operations and manufactories[2] In the category of the King's duties we find it laid down —

"Thus the King shall not only keep in good repair timber and elephant forests, buildings, mines created in the past, but also set up new ones".[3]

While stating the rules regarding the business of the collection of revenue by the

1 See, however, P 136, J R A S (1916), for the view that the extant work of Kautilya may be of a later date, see below for further reference

2 Artha-Shastra Book II, Ch I

3 Artha-Shastra Book II, Ch 1

collector-general, the great minister of the Mauryas says —

"The collector general shall attend to (the collection of revenue from) forts (Durga), country parts (Rashtra), mines (Khani) buildings and garden (   ), forests (Vana), herds of cattle (Vraja) and roads of traffic (Vanika Pathas)' [1]

The collection from mines has been thus defined for the guidance of the collector-general —

Gold silver, diamonds gems pearls corals conch shells metals (Loha) salt, and other minerals extracted from plains and mountain slopes come under the head of mines

Thus in the passage above quoted we get a definition of the term खनि or mine as understood by the author of the Artha Shastra

The whole of Chapter XI of the Second Book is devoted to the law regulating the duty of the superintendent of the treasury in connexion with the business of the examination of gems that are to be stored in the treasury This Chapter contains a masterly classification of gems and indicates Kautilya's knowledge of some countries

1 Artha Shastra, Bk. II Ch. VI
2 Artha Shastra, Bk. II Ch. XI

of the south of India as well as of foreign countries like Ceylon and Persia The author goes on with his description of a large variety of gems and informs the reader of the sources of the gems as follows —

"Mines, streams, and other miscellaneous places are their sources"[1].

The whole of Chapter XII of the Second Book is devotod to rules on the subject of conducting mining operations and manufactures and we get, perhaps a very valuable piece of information, that in Ancient India of the 4th century B. C. the practice of working mines and the knowledge of mineral products had been so extensive as to demand the composition of special scientific works solely dealing with these matters.

The qualification of the superintendent of mines is described and the methods of working mines are laid down with an exhaustive detail it is said —

"Possessed of the knowledge of the science of dealing with copper and other minerals. experienced in the art of distillation and condensation of mercury, and of testing gems, aided by experts in mineralogy and equipped with mining labourers

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1 Artha-Shastra Book II, Ch XI

and necessary instruments, the superintendent of mines shall examine mines which, on account of their containing mineral excrement, crumbles, charcoal, ashes, may appear to have been once exploited or which may be newly discovered on plain and mountain slopes possessing mineral ores, the richness of which can be ascertained by weight, depth of colour, piercing smell and taste [1]

After minutely describing the different kinds of ores, their colour, appearance, smell sources where they are to be found, their softness or hardness and the processes of treating ores for the purpose of clearing them of impurities either superficial or in chemical combination the author says that the yield of mines may be put to such uses as are in vogue and states that the commerce in commodities manufactured from mineral products should be centralised and punishment for manufacturers, sellers and purchasers of such commodities outside the prescribed localities should also be laid down Provision is made against the theft of mineral products by a mine labourer (except precious stones) in the shape of fines to the extent of eight times the value of the thing stolen as regards the theft of precious

1 Artha shastra Book II Ch. XII

stones, Kautilya lays down the sentence of death. Mining operations were allowed to be carried on by persons who had previously obtained license from the Government and a person, who steals mineral products or carries on mining operations without license, was bound with chains and made to work as a prisoner

The Government leased out certain mines for a share of the produce and other mines were worked by the direct agency of the Government , for it is laid down '—

"Mines which yield such minerals as are made use of in preparing vessels as well as those mines which require large outlay to work out may be leased out for a fixed number of the shares of the output or for a fixed rent Such mines as can be worked without much outlay shall be directly exploited by Government agency"

The duties of the superintendent of Ocean mines are laid down and it is provided that he should attend to the collection of conch-shells, diamonds, precious stones, pearls, corals, and salt and should also regulate the commerce in the above commodities.

Kinds of revenue obtainable from mines are clearly stated .—

emperor attempting to be a real *chakravarti* at the cost of smaller kings or even to an imperial ruler who wants to gain territories from the empire of another emperor These theories are so general and so correctly founded on the true psychology of the human nature that they may be aptly described as defying the limits of time or space

Indeed, from the nature of these theories of Kautilya it would be very unsafe to suggest in the teeth of the hoary tradition, that they could not have been promulgated by the prime minister of the Maurya Emperors or that Kautilya was not a contemporary of the earlier Mauryas

This however does not amount to supporting the views of Dr Jacobi that the extant work ascribed to Kautilya was entirely the handiwork of the individual Kautilya who was the prime minister of Chandra Gupta Maurya

Assuming for the moment that the statements of Kautilya on the relation of the King to the mineral wealth were really inserted by him in his treatise on Politics and were not later interpolations let us see how far these rules were actually observed in practice or were capable of being so observed in the Maurya Empire

of Chandra Gupta and his successors. Direct evidence we cannot possibly obtain ; we shall have therefore to depend more or less on indirect or internal evidence for determining the question as to how far these rules of Kautilya remained mere theoretical assertions, in short, our business would be to ascertain whether or not he was laying down some ideal rules, rules which the prime-minister of an ambitious autocrat desired to be introduced in the Empire as the most suitable ones for enabling the ruler to procure the necessary means for extending the boundaries of the empire and maintaining order within it by establishing a vast army and a highly paid, big and efficient civil service. To my mind it seems most likely that Chandra Gupta or his successors never adopted the entire treatise of the prime-minister as a practical code in their empire, although as I have previously pointed out that the prime-minister himself stated in his work that he wrote the treatise for the benefit of the King नरेन्द्र।

The Artha-Shastra and the law books (the Sutras and Shastras) are in complete accord in all the chief points which these works have in common , this circumstance clearly shows that such common rules are

really taken from the rules regulating the actual life of the men of those times[1] The presence, therefore, of rules of law relating to mines and minerals of the type found in the Artha-Sastra in the law books (Sutras and Shastras) would undoubtedly lead to the only possible conclusion that in fact Kautilya was promulgating practical rules which were observed and enforced in the Maurya Empire while their absence cannot fail to suggest that Kautilya's rules on mines and minerals were theoretical in character I have discussed before the rules found in the law books on this matter it is evident that they do not corroborate the author of the Artha Shastra regarding the law relating to mines and minerals I think that in these circumstances one would not be far wrong in attributing a theoretical character to the elaborate mining regulations found in the Artha Shastra of Kautilya if it is asserted as has been done by Jacobi and his followers that the entire work as we have got it now is the production of the individual Kautilya

Yet it would be highly improper and unhistorical to suggest that the entire or even the major part of the work of Chandra

1 [illegible] XIII [illegible]

Gupta's minister was wholly theoretical; for the contemporary evidence of Megasthenes is sufficient to establish the truth that in the empire of Chandra Gupta the bureaucracy was highly developed and there were numerous departments of government entrusted with the work of administration. Though Megasthenes' account of the social division and rules of caste and marriage is inaccurate, that he was better acquainted with the official life of several classes of high officials seems to be more certain and supports and corroborates the account in many instances of the life and duties of the superintendents as given in the Artha-Shastra. Unfortunately we have lost the work of Megasthenes on India and the extracts from the writings of later Greek authors do not satisfy the mind; however, the account of the official life is as follows .—

"Of the great officers of state, some have charge of the market, others of the city, others of the soldiers. Some superintend the rivers,—measuring the land as is done in Egypt,—and inspect the sluices by which water is let out from the main canals into their branches, so that everyone may have an equal supply of it."

"The same persons have charge also of the huntsmen, and are entrusted with the

power of rewarding and punishing them according to their deserts.

" They collect the taxes and superintend the occupations connected with land as those of wood cutters carpenters, blacksmiths and miners They construct roads and at every ten stadia set up a pillar to show the bye roads and distances.

Those who have charge of the city are divided into six bodies of five each The members of the first look after everything related to the industrial arts '—

" The officers of the second division look after the entertainment of foreigners To these they assign lodgings

' The third body consists of those who enquire when and how births and deaths occur

' The fourth class superintends trade and commerce Its members have charge of weight and measures and see that the products *in their season are sold by public* notice No one is allowed to deal in more than one commodity unless he pays a double tax

' The fifth class supervises manufactured articles which they sell by public notice

"The sixth and last class consists of those who collect the tenths of the articles sold —

From this, corroboration, whatever may be its extent and value, it cannot but be held that the system of administration described in the Artha-Shastra was at least partially realised in the Empire of Chandra Gupta. The reference to the work of the superintendent in connexion with the working of mines leaves no possible doubt that Megasthenes knew that mining operations were carried on in the time when he resided in India and consequently, apparently, the minute rules of Kautilya may not be absolutely imaginary. Yet admitting all this, we are still hopelessly in the dark so far as the main theme of Kautilya on this subject is concerned. Megasthenes' statement, it seems to me, fits in with the prevalent view of the royal-position of revenue-receiver merely and cannot by any stretch of rational construction be made to fit in with the views of Kautilya who makes mines the property of the State and commerce in minerals a State-monopoly. It, therefore, becomes necessary to institute in detail a comparative study of the accounts of Megesthenes and Kautilya.

Let us for a moment examine critically the nature of the corroboration which Kautilya's description of the social, moral,

legal and administrative institutions receives from Magasthenes account of Maurya India

Dr Otto Stein in his recent dissertation on "Megasthenes and Kautilya" has for the first time made a scholarly comparison of the accounts of India given by the Greek ambassador with those contained in the extant treatise of Kautilya. If the conditions described in the two accounts were in complete agreement then there would have been no doubt that the Greek ambassador and the author of the Artha Shastra were contemporaries and the Artha Shastra in the extant form was really the work of Kautilya But if on the contrary they partially agreed that would not necessarily lead to the conclusion that Kautilya was not Megasthenes contemporary or that he was not the prime minister of Chandra Gupta If the accounts of the Indian social and political conditions given by the Greek ambassador and the Indian politician partially agreed that might be due to the fact that Kautilya was the founder of a School of political thought whose disciples added to the original teachings of their preceptor so that the extant treatise passing under the name of Kautilya might be the accumulated result of the labours of several

centuries of Kautilyan scholars. In fact, this view has been propounded by Dr Keith[1].

Scholars have till recently contented themselves with pointing out merely the agreements between the two accounts , but, they did not pay attention to the numerous points in which these accounts differed , nor did they study the nature of the agreements , Dr Stein's studies have now revealed the very suggestive circumstance that as a rule Megasthenes agrees with Kautilya only in such things as would not change at different periods of time. Megasthenes, however, differs from Kautilya in the most essential details[2]

The greatest difference between Kautilya and Megasthenes is seen in the accounts of the administration respectively given by them Dr Winternitz says .—

" Dr Stein has shown, that more specially the financial bureaucracy and the military organisation as described by Megasthenes are entirely different from those referred to in the Kautiliya Artha-Shastra "[3]

1 See J R A S (1916)

2 The Viswa Bharati Quarterly, Kartic 1330 B S —pp 262 263

3 Dr Winternitz in the Viswa Bharati Quarterly, Kartic 1330 B S p 263

So far as minerals are concerned Dr Winternitz thus summarises the results of Dr Stein s investigations —

" What Megasthenes reports about metals mining and metallurgy points to a more primitive time than the numerous details given by Kautilya about these subjects which show a great advance in technical knowledge and in chemistry Among different kinds of gold Kautilya also mentions artificial gold, made from other metals by a chemical process in which mercury is used Now the use of mercury both in alchemy and in medicine is well known in India but occurs only in later literature It is mentioned once in Charaka s medical Sanhita twice in Susruta once in the medical chapter of the Bower manuscript (4th century A D) and never in any earlier text [1]

If regard be had to the agreements and the differences between the accounts of Megasthenes and those found in the extant Artha Shastra one is forced to admit that the corroboration of Megasthenes dwindles into almost nothing

Out of the vast mass of literature that has sprung up around the Kautiliya Artha Shastra three distinct theories n to th

[1] [illegible]

origin of the treatise and the identity of its author emerge and each one of these theories has been promulgated by serious thinkers after prolonged research and careful investigation

The eminent Indologist Prof. Jacobi is responsible for the theory which ascribes the whole of the extant treatise of the Kautiliya Artha-Shastra to the individual Kautilya who was, according to the learned professor, a contemporary of the Emperor Chandra Gupta of the Maurya dynasty.

The second view has been put forward by Dr. Keith who agrees with Dr Jacobi in holding that Kautilya was a contemporary of Chandra Gupta and his prime-minister; he also concurs with Dr Jacobi in thinking that Kautilya was a great political philosopher but rejects the view that he was the author of the extant treatise According to him, Kautilya was the founder of a school of political philosophy which in subsequent centuries came to be known after him and the original traditions of the founder were continued, developed or added to by generations of scholars whose accumulated labours were embodied in the extant treatise.

As the promulgators of the third view stand the names of Dr. Julius Jolly and Dr. Otto Stein,

Dr Jolly in his recent edition of the Artha Shastra upholds the view that the Kautiliya Artha-Shastra is of later origin than the 4th century B C

Dr Stein concludes that Megasthenes and Kautilya could never be contemporaries and the extant treatise must have originated at a later period According to these high authorities the present work might have been composed some time in or after the 4th century A D

After a careful consideration of the different theories of the origin and authorship of the Kautilya Artha Shastra I am inclined to accept the theory of Dr Keith since the ancient tradition current all over India as regards the part played by an individual of the name of Kautilya in establishing the Maurya dynasty cannot by any means be ignored[1] for the advice of Schlegel that historical tradition should never be abandoned ought always to have great weight in ascertaining the existence of past events[2] Then again we must always remember the method of the making of great works in the Sanskrit literature like the Vedas the Smritis the

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1 [illegible]

2 [illegible]

Mahabharata and the Ramayana, to name only a few of the greatest cultural records of the Aryan mind in India, the Artha-Shastra, as we have it now might consist of earlier and later parts, belonging to different centuries; it assumed its present form some time in the days of the great politico-legal and socio-religious upheaval of the 3rd and 4th centuries of the Christian era This must have been so · the legal rules contained in the extant Artha-Shastra betray a striking resemblance to those contained in the Smritis and show a later stage in the development of law[1]; and in the third place, so far as the rules regarding minerals are concerned, the Artha-Shastra undoubtedly shows later additions which betray a family likeness to the rules contained in the works of the third or fourth century A D. which are nothing but new matter added by the teachers of the Kautilian School of political philosophy to make the standard work of the school a practical guide suitable to the changed conditions of the country

But to suggest on the inference drawn solely from a comparative study of Kautilya and Megasthenes that Kautilya's rules, particularly as regards the ownership of mines and commerce in minerals, are mere

1 Dr Jolly's Introduction to the Artha Shastra,

theories, would not be justified by the accepted cannons of historical criticism unless there be other corroboration from different sources or from the economic or political or cultural conditions of the country or from the internal evidence obtainable from the treatise of Kautilya himself or other authoritative works of periods antecedent to, comtemporary with or posterior *to the work of the Prime* Minister of the great Maurya Chandra Gupta

Kautilya begins his treatise as a compendium of almost all the Artha Sastras[1] composed by ancient teachers and concludes his voluminous work by the statement that he composed not only the Sutras but the Bhasya (commentary) on them since he noticed discrepancies in many ways on the part of the writers of commentaries on the Sutras So that in his days commentaries on the recognised authors of the Science of Polity must have been in existence In the course of the work the acute author refers both to the ancient schools of the Artha Shastra and also to individual authors on this science

Even during the Vedic period the Artha Shastra was a recognised science and was

1 Artha Sastra B I Chap 1

regarded as an Upa-Veda of the Atharva-Veda.

Of the Vedas, there are four Upa-Vedas, of the Atharva-Veda—Artha-Shastra. (The fourth Part).

In Charanavyuha the 19th Parisista of the Atharva-Veda, will be found the following —

Where in अत Artha-Shastra is the Upa-Veda of the Rig Veda

Ayurveda is the Upa-Veda of Brahma-Veda. It is stated that [illegible] (i e. the Atharva-Veda) is the Artha-Shastra itself.[1]

Therefore, towards the close of the Vedic period of Indian culture, the science of Polity became so very important an object of study as to be recognised as an Upa-Veda like the science of medicine

In the Bana-Parva of the Maha-Bharata we have this[2] [illegible] , the Santi-Parva of the Maha-Bharata refers to many authors and schools of the Artha-Shastra.

The Schools of Manava, Barhaspatya, Ausanasa, Parasarah, and Ambhuya are mentioned and thirteen authors are referred to in the text of Kautilya himself Thus there is no doubt that there existed in ancient India prior possibly to the 4th cen-

1 11 5 11

2 Bana-parba, 32 61

tury B C a number of schools on the science of Polity, and there were also many teachers of great eminence This list of schools and individual authors is borne out by the fact that the Santi Parva of the *Mahabharata* mentions many of the authorities and schools mentioned by Kautilya[1] In fact the Santi Parva of the Mahabharata may be regarded as containing a valuable treatise on the Artha-Shastra itself The Santi Parva not only mentions the names of the authors of the Artha Shastra but quotes passages from those authors Verses have been cited from Manu Usanas and Brihaspati Except a few ones all the verses that occur in Kautilya's Artha Shastra have been quoted by him from previous authorities and we see Kautilya utilising the verses of Bharadvaja Visalaksha and Parasara In a passage towards the end of his book Kautilya indicates that he has rescued the Artha Shastra from oblivion It is possible therefore that at the time when he wrote the Artha Shastra the study of Artha Shastra was falling into desuetude and the vast literature on the subject was on the point of being forgotten Though it

1 Santi Ch.
2 [illegible]

is an undoubted fact that we do not possess any complete works of many of the authors whose names have been mentioned by Kautilya, much of the ancient literature of the Artha-Shastra evidently lies buried in the pages of the Mahabharata The Santi-Parva seems to be the Artha-Shastra of the pre-Kautilyan Philospher, Kaunapadanta, who is no other than the great Vishma of the Mahabharata and it is highly probable that in Kaunapadanta's Raja-Dharma we get a summary of the works of Vrihaspati, Usanas and Manu[1]. Some more authors are mentioned by Kautilya, who must have flourished since the Mahabharata was composed.

If we compare the rules of Kautilya as regards the ownership of mines and the commerce in minerals with the rules, if any, on this subject in the political science of the pre-Kautilyan period, we shall see that the elaborate rules establishing the ownership of mines in the State and making mining and commerce in minerals a State-monopoly have no foundation there.

Instead thereof we find the general rule that the King is entitled to a certain share only of the value of the produce of the mines and had no ownership in them.

1 Car Lec 1918 P 110-111

There is a sloka in the Santi-Parva of of the Mahabharata which finely brings out the relation of the Kings of Ancient India to the produce of the land in the kingdom

The Sloka runs thus —

दोग्ध्री धान्यं हिरण्यं च मही राजा सुरक्षिता ।

नित्यं स्वेभ्यः परेभ्यश्च तृप्ता माता यथा पयः ॥

Maha, Santi, 71 ch sl 19

The sloka may be rendered into English as follows —

As the mother gives milk to her child, so the earth well protected by the sovereign bestows paddy, and gold on all who labour therefor (milk her for the same)

It is quite clear, therefore, that the ancient Artha Shastra contained in the Santi Parva of the Mahabharata upholds the theory that the mineral wealth belongs to the people and the king gets a share by virtue of his being the protector—a position which we have established from other ancient codes

This ancient rule of the Artha Shastras will be found in the Santi Parva of the Mahabharata where Kaunapadanta has been giving instruction to the Prince Yudhisthira and telling him of the origin of kingship

1 See P 11

"A subject is bound to pay revenue to the King The cultivators should pay a tenth, eighth or sixth part of their produce to the King as revenue *Several authorities* aver that a fiftieth part of animals and gold should be paid to the King [1]

Similar law is laid down by the Sage Vashistha[2] Vishnu in Chapter three says —

"He must take from his subjects as taxes a sixth part every year of the grain, and of all seeds Two in the hundred of cattle, gold and clothes "[3]

Similar rule is laid down in the Sanhitas of Apastamba[4] as well as Baudhayana [5]

Now from the authorites quoted and referred to above we are sure that the ancient law did not recognise the ownership of the King in minerals and there was no State Monopoly in mining operations in ancient India From the above data I have no hesitation in propounding the view that the whole of Kautilya s elaborate rules on the subject of mines as I have summarised above is an innovation of the wily minister whose political maxims sometimes outrival the unscrupulousness of the Machiavellis of

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1 Gau. X—24—27

2 See Chapter XIX, Sloka 26 27

3 Vishnu Ch. 3 slo. 22—24

4 II 26, 9

5 1—18 1 13 15

the present day Now this ingenious author adopts the fact of the neglect of the study of the Artha-Shastra and the consequent forgetfulness of the people of Northern India as regards the rules of the Artha-Sastra on the special subjects treated in that science as a suitable opportunity to promulgate his own theories of the king's rights and duties, perhaps with a view to lay the foundation for a theoretical justification for the possible usurpations of mines by the stern despot whose sole aim was to organise a highly centralised autocratic government. The nature of the rules also shows a very high developement of metallurgy and practical chemistry.

The known facts of Chandra Gupta's administration show that he was a stern despot and he "oppressed with servitude the people whom he had rescued from foreign rule"[1] and that he maintained a strict order by a highly organised autocracy supported by punishments of ruthless severity. For such a despot the unscrupulous Brahman Kautilya, a follower evidenter of the Atharva-Veda, a Political Philosopher of the Machiavellian type who in his statecraft was not in the least hampered by any moral scruples, was a fit

1 See P 74 of Smith's Oxford History

prime-minister and an equally fit political philosopher

In support of my position in this part of the critisism, I quote the authoritative pronouncement of Professor Hopkins who says[1] as follows —

"The fresh evidence on this point (existence of caste in the Buddist-Period) is supplied by the text of the Artha Shastra called the Kautiliya which may date from about 300 B C and is in accord with the Sutras and Shastras in all the chief points which these works have in common This Artha Shastra recognises castes and mixed castes and agrees with the *castra* of the law givers in a multitude of instances, showing that the scheme of law arranged by the Brahmans was neither ideal nor invented but based upon actual life

"As the Kautiliya is a manual of rules imposed by a practical stateman it is impossible to suppose that the conditions it depicts are imaginary, yet the same conditions are found in the Sutras, etc If it was indisputable that this work belonged to third or fourth century B C, it would be of the utmost importance historically As it is, some of the provisions of Kautiliya agree with those of later rather than

1 Cambridge History of India, Vol 1 P 2?1

earlier law books and for the present it is not advisable to accept all its rules as belonging to the time assigned to the work as a whole"

I submit, therefore, on the grounds that because the mining rules of Kautilya have no counterpart in the Shastra of the law-givers and as the rules on this topic are not in accord with the shastric rules, that Kautilya must have invented these rules for the reasons which I have indicated above; assuming, of course, that the original work of Kautilya contained these elaborate rules on the law relating to mines.

Another hypothesis is also open to me; it is quite likely that the elaborate rules of law embodied in the Kautiliya regarding mines do not belong to the 3rd or 4th century B. C.—the period which was assigned by Jacobi to the work of Kautilya as a whole. I shall shortly take up this aspect of the rules relating to mines and the mineral wealth in detail.

Kautilya proposes to write his famous work-the Artha-Shastra-on Indian materials as I have shown before from a text cited from his work itself and invites his readers to believe that he had simply been resusciating the forgotten lore of the Artha-Shastra written in India; and consequently, he

would have his reders think that the rules and principles enunciated by him are in all respects old Indian rules which have come down from hoary antiquity, but this profession of the great Political Philosopher as regards certain very important topics is open to the greatest suspicion, having regard to the fact that in no extant treatise on Political Philosophy or Smriti Law Book or in any other Sanskrit work of the pre-Kautilyan period there is the slightest trace of any of the theories promulgated by Kautilya on such matters in his famous work. The theory of the state-ownership of mines is undoubtedly one of these topics introduced by Kautilya, and it is not at all very difficult to discover the original source of the rules of the author as regards his theory of the ownership of the state in mines and consequent monopoly in mine working, supposing again with Jacobi that the extant work is the book which Chanakya himself produced

It is well known that Chandra Gupta and his trusted friend and afterwards his able minister the king maker Chanakya visited Alexander the Great in the Punjab and excited him to push on towards Magadha which, according to their opinion, would most likely fall an easy

prey to the victorious arms of the Great Macedonian.[1]

It is also an established fact that Greek historians and philosophers as well as merchants of Greece and Egypt and Anterior Asia accompanied the invading armies of the "warlike son of Philip" and not only were there battles and sieges and treaties but there was also no lack of the feast of reason and flow of soul, during the interval between the battles and sieges, amongst the learned men of the countries which the victorious arms of the arch-invader visited and the cultured set of philosophers and merchants and politicians from the west and the near east who followed Alexander in his triumphal marches through the countries of Asia. In Greece as well as in Rome from very ancient times mines were the property of the State and were worked by the State by the agency of the slave population Gold and Silver mines abounded in some of the Greek provinces and in the islands of the Greek Archipelago. The islanders of Siphnos spent some of the wealth which they dug out of their gold-mines in making additions to the temples of Delphi.[2]

1 Plutarch's Life of Alexander Ch LXII

2 Bury—Hist of Greece—P. 806.

It is said that under Pisistratus and his sons the silver mines of Laurian were effectively worked by the State [1]

Big speculators under license from the State sometimes worked the mines in Greece[2]

Slaves were employed in working mines and it is stated that the silver mines of Laurion had to be stopped on account of the desertion of about 2000 slaves [3]

During the ministry of Lycurgus, the prosperity of Athens was largely due to the vigorous working of the silver mines of Laurion, which were now managed on a large scale by licensed private companies [4]

Philip of Macedon and his son the Great Alexander as kings of Macedon were owners of mines which they worked with slave-miners and the gold and silver of the State mines contributed largely to the income of the state of Macedon and enabled them to carry on their expeditions [5]

So from the evidence above collected it undoubtedly appears that, in the Macedonian Kingdom and also in Greece, the State

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1 See Bury Hist of Greece P 105 & 361

2 Bury Hist. of Greece P 425

3 *Bury History of Greece P 490.*

4 Bury History of Greece P 620

5 See Adolf Holm's History of Greece Vol III and Bury's History of Greece P 581

was the owner of mines and under circumstances of extreme necessity or the prospect of economic advantage, instead of the usual practice of exploitation of mines by the agency of the State with the aid of slave labour, private individuals under State license were allowed to work the mines. In Kautilya's work we also find the self-same rules laid down[1].

We also find that Kautilya recommends the transportation of a Brahmin offender for certain specified political offences to the mines, evidenly as slaves[2].

Now taking all the facts together into our consideration, we see no reasonable objection to suggest that the original idea of the rules of Kautilya as regards the State-monopoly of mines was derived from the great Indian politician's knowledge of the Greek law on the subject of mines and their working The object of Kautilya is patent ; he enunciated these rules with the ulterior motive of facilitating the easy administration of the contemplated Empire to the building of which the Maurya prince Chandra Gupta and Kautilya as his Brahmin adviser devoted their time and energy.

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1 Artha Sastra, Book 1, Chap 7

2 See V Smith's Oxford History of India, P 180.

There is no wonder, therefore, that Chandra Gupta's prime minister would propound such rules regarding the mineral wealth of the country as would be acceptable to the autocratic founder of a growing empire of which the stability would depend much on the sinews of war and on efficient administration too This view finds some support from the fact that Kautilya was[1] fully aware that the peninsula of the Deccan was rich in minerals and that the Maurya Emperor (Chandra Gupta or Bindusar) had been extending his dominions in the country abounding in valuable mines which produced gold, diamonds, pearls and other gems It is natural, therefore, for him to invent or adopt rules which would afford theoretical justification for the usurpation of mines in the conquered countries of the Deccan

Mr E B Havel, however, takes the view that the king was the owner of Crown lands which were simply a certain proportion of the Communal land and was his share according to Aryan Traditions as the head of a village or group of villages, and he further says that the Crown lands in Chandra Gupta's time included elephant

1 Artha Shastra, Bk. II—Ch. 2,11 16.29 ... ; Bk. VII Ch. XII

2 See Smith's Oxford History of India Chapt. I Bk. II generally and pp. 63—69

forests and mining ground and agricultural land which were either leased out or cultivated by hired labour[1] If one accepts the position taken up by Mr. Havel, it may be argued that Kautilya was speaking of the king's ownership of mines in Crown lands and of the monopoly of commerce in minerals found there ; but, there is nothing in the Artha-sastra to put any limitation on the general principles of Kautilya and I think the existence of Crown lands was in no way inconsistent with the view I take, but, rather supports the position that in so far as the Crown lands were concerned, the position of the king was similar to the position of an ordinary private owner and the king could lease out or cultivate by hired labour just as he liked and if mines were discovered beneath such lands, evidently the ownership got vested in the king.

We have shown before that the previous literature on the subject in question, so far as we know it, does not support Kautilya's theory In principle, the subsequent literature on the subject also is in full and complete agreement with the view of the ancient works and I shall just refer to some passages from the Sukra-niti and Kamandakya Nitisara in support of my position.

1 Aryan Rule in India P 80

The political philosopher Sukra Acharyya devotes the second section of the 4th book of his treatise on Politics to Treasure and the slokas 212 to 259 deal with the principles and practice of taxation In Sloka 212 the author defines *Sulka* in the following terms —

> "Sulka or duty is the King's share received from the buyer and the seller
>
> Sloka 212[1]

After defining sulka, the sage proceeds to enumerate the regions from which the king might expect to receive sulka or duty and says —

> "The regions of sulka are the market place, streets and mines[2]"—Sukra,

So the necessary logical conclusion from the above slokas cannot but be this that the king is entitled to receive *sulka or duty* from mines as he is entitled to do so from streets and market places—obviously from the commodities produced or exposed at those localities

Then follows a few slokas which lay down certain general principles of taxation, after which appear a number of slokas dealing with the specific amount of tax to be levied on specified commodities

1 Sukra—Sec. II Ch IV

2 Sukra, Sloka 213, Sec II Ch. IV

to communicate to the king such matters and affairs which the king should know and in that connection we find the following slokas :—

The amount realised without cultivation, how much accrues from forests, the amount raised through mines and jewels[1]

Along with the above slokas (211-212 Bk II) one might read the following occurring lower down in the same book —

Sailors, miners, fowlers, carters, repairers of implements etc ... to be appointed to their proper works[2]

From the above it is not unreasonable to argue that the king had officers to superintend that the miners were appointed to their proper works, which must surely mean the raising of minerals and that the king derived profits from working mines with expert miners engaged by his officer If this is conceded, surely one would not be wrong if one says that Sukra Acharya agrees with Kautilya in making mines royal property

This position however, is not at all consistent with the view which I have previously shown Sukra to have adopted in regard to minerals and metals in general

1 Sukra Book II Slo 211—212

2 See Sukra 414—415 & 410—411 of Book II

Though the slokas last-quoted above might be so construed as to make the king the owner of mines, yet if any other reasonable and fair construction is capable of being borne by the slokas, resort must be had to that construction, simply to make the position of Sukra-Acharyya consistent throughout his treatise.

It is well-known that in ancient India there were Government officials to supervise the works of all kinds of labourers and artisans, so that the inclusion of the term miner in the sloka above quoted does not necessarily show that these miners were labourers working in the royal mines—most likely, there was a department of mines in ancient India whose officers supervised the labour of private mines. This supervision was all the more necessary because the king derived a large amount of revenue from mines in the shape of duties and under these circumstances, the sumantra had an important duty in informing the king the amount of taxation from minerals and metals.

Though I consider this to be the true interpretation of all the rules of Sukra relevant to the topic, I must notice that the ownership of the king in regard to lands and mines may be limited to the Crown lands only[1].

1 See E B Havel, Aryan Rule in India P 80.

Now, we find that the Sukra Niti asserts *the position that the mines* belong to the subject and the king is entitled to a share of what remains of the produce as profit after defraying the *entire cost of* production I quote the slokas in the original[1]

स्वर्णाद्र्दं च रजतात् ताम्रातथ तामत
चतुर्थं गन्तु षष्ठं सीसात् त्रपाद् सीसकात्
रत्नाद् चैव काचाद् क्षतिजाद् अय अपटः ।

The political philosopher Kamandaka is supposed to be an author of the 3rd or 4th century A D and he says that he composed his Niti sara by collecting extracts from the works of the wise and Brahma like Vishnu Gupta, in fact, his Niti Sara is professedly a summary of Kautilya s Artha shastra[2]

Yet in his work, which must have been so extensively read in his time and after wards that, according to Dr Rajendralal Mitra, *the Niti sara was a very favourite work* amongst the Hindu population of Java and Bali island, the Sage Kamandaka has not repeated the statements of his illustrious predecessor on the King s monopoly of the mines, minerals and commerce in mineral produce All that this author says on this subject rather supports the traditional the-

1 Sukra 4—2—118 and 119
2 See Chanda s Indo-Aryans p 231

ory of the king being simply a receiver of the revenue from the mines in his kingdom[1].

कृषिर्वणिक्पथो दुर्गं सेतुः कुञ्जरबन्धनम्
खन्याकरबलादानं शून्यानाञ्च निवेशनम्
अष्टवर्गमिमं साधु स्वच्छवृत्तो विवर्द्धयेत्
जीवनार्थमिहाजीव्यैः कर्त्तव्या कारणाधिकैः ।

Then, again he says that gold, paddy clothes and other commodities are the result of the labour of the subjects and this view cannot possibly tally with the view of Chanakya who would deprive the subject altogether of any right in the minerals; the sloka where this is stated by Kamandaka is as follows[2] :—

हिरण्यं धान्यवस्त्राणि वाहनानि तथैव च ।
तथान्यौद्रव्यनिचया: प्रजात: सम्भवन्ति हि ॥

Kamandaka further does not support the view of Kautilya in regard to the commercial character of the sovereign In the thirteenth Chapter of his work Kamandaka in Slokos 41—58 gives an elaborate account of राजवृत्ति or the King's duties and he does not insert in his list commerce, on the contrary, he mentions नाऽयतश्च करादान as one of the duties of the sovereign This seems to me to be quite conclusive of Kamandakā's position on this subject and we may be justified in putting forward the position

1 Kama, 5 Ch 78—79
2 Kama, 13, Ch 26

Now, we find that the Sukra-Niti asserts the position that the mines belong to the subject and the king is entitled to a share of what remains of the produce as profit after defraying the entire cost of production I quote the slokas in the original[1]

मर्यादं च स्वतात् कौशलमथ तावत
चतुर्थं मन्तु षष्ठांशं सीसात् त्रपाय सीसकात्
त्र्यंश चैव मानव सपिण्डात् व्यय शेषत ।

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2 See Chanda s Indo-Aryans p 23)

ory of the king being simply a receiver of the revenue from the mines in his kingdom[1].

कृषिर्वणिक पथो दुर्ग सेतु' कुञ्जर बन्धनम्
खण्याकर धनादान शून्यानाञ्च निवेशनम्
अष्टवर्गमिमं साधु स्वक्कृवत्तौ विवर्द्धयेत्
जीवनार्थमिहाजीव्यै: कर्त्तव्या करणाधिकै ।

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1 Kama, 5 Ch 78—79
2 Kama, 13, Ch 26

that Kautilya stands alone amongst the political philosophers of India in his theory of the state monopoly of mines and none of his predecessors or successors adopt his theory This absence of corroboration from the writers on the Artha Shastra or Political, science of Ancient India irresistibly leads to the conclusion that Kautilya's rules were undoubtedly his own invention

In the Artha-Shastra itself there are some glimpses of the old view visible In the introductory passage of the sixth chapter of his second book Kautilya says —

The collector general shall attend to the collection of revenue from Durga (forts) Rastra (country-parts) Khani (mines etc)

Further on in the same Chapter he defines the different items from which revenue on the head of mines may be collected , he says—

'Gold, silver, diamonds, gems, pearls, corals, conch shells, metals, salt, and other minerals extracted from plains and mountain slopes come under the head of mines "

In defining the term आयमुख (forms of revenue) he says—" Capital (Mula), share (Bhaga), premia (Byaj), parigha, fixed taxes (Klripta), premia on coins (Rupika) and fixed fines (Atyaya) are the several

forms of revenue (Ayamukha, *i. e*, the mouth from which income is to issue).

From the above extracts from Kautilya himself, it may be reasonably suggested that he also regarded *Khani* (mines) as a source of royal revenue and from the very circumstance that this item is counted along with other undisputed sources of income wherein there is no pretension for the assertion of the King's ownership, it is evident that in this chapter Kautilya adopts the view of the traditional school and mines are not regarded as the property of the Crown but are considered by him to be the property of the subject and the king merely derives revenue from them.

We have seen above that salt is regarded by Kautilya as a mineral product, but, in regard to salt, he has laid down a rule which is really the traditional view of the royal position in regard to minerals generally In his book on शुल्कव्यवहार (Law regarding taxation) Kautilya lays down[1]

धान्य स्नेह चार लवण मद्य पक्वान्नादीनां चतुर्विंशति पञ्चविंशति भागी वा ।

This shows that Kautilya knew the old law to be what I have shown it was from the authorities I have cited above. He knew that the mines were not the property of the king in India, but that they belonged

1 Sl 1—40 Ch

in ownership to the subjects and that the king was entitled to draw revenue from the mines as he was entitled to do so from other natural or artificial commodities

I might have unhesitatingly suggested that in the earlier part of his work Kautilya adopted the view of the politicians of the pre-Kautilyan period[1] while in a subsequent part of his work[2] he propounded his own theory on the subject, except for the circumstance that in defining आयमुख Kautilya mentions Capital (Mula), therefore, it may be said that he at least suggested that the king undertook commercial or mining undertakings which require मूल or capital

This suggestion is rather substantial and might, at any rate lead to the conclusion that Kautilya was indeed consistent in every part of his voluminous work But the author says —

"If cultivators pay their taxes easily, *they may be favourably supplied with* grains cattle, and money[3] —

Thus, the term मूल or capital might refer to the capital employed by the king in providing supplies to the cultivators and

1 Bk. II Ch. VI
2 Bk. II Ch. XVI
3 Chapter I Bk. II Artha Shastra

hence might form a source of revenue or आयमुख. If we do not accept this view, I submit. Kautilya propounded two inconsistent positions in regard to mines. The one position is consistent with the traditional view and the other is directly its opposite. Hence, undoubtedly Kautilya's new theory was an innovation.

The economic condition of India in the pre-Maurya period falsifies the theory of Kautilya. The peoples of India had ever been, first and fore-most, village folk. 80 or 90 P.C of the inhabitants lived in villages and their principal occupation was agriculture. They cultivated their own lands and were quite proud of their social status. They held it a degradation, to which dire misfortune alone would drive them, to work for hire[1]. Besides agriculture, the industries and trades supplied the occupation of a large percentage of the population in those days. In the documents of the age of Buddha, there is mention of guilds of work-people and the number of trade-guilds is often given as eighteen and Rhys Davids enumerates the possible guilds of work-people, but there is no mention of a miner's guild, although weavers, leather-workers, fishermen, butchers, potters, hunters and trappers,

1 Rhys Davids, Buddhist India P 51.

rush-workers and basket makers appear to have combined in guilds The omission of workers in mines from this list is significant enough, and might naturally lead up to two suggestions— i) there were no miners in Northern India or in other words no mines were worked, (ii) mineral Industry was not of much importance

I have already stated that a perusal of Chapter XII of Book II of Kautilya's Artha-Shastra could not but fail to engender the belief in the reader's mind that the art of mining was a highly developed one in his time and mineralogy had already become a science A practical science like mineralogy can only arise on the background of actual exploitation of mines on a large scale In that case, scientific teaching of mineralogy as well as of the art of the industrial development of mines would be a social necessity, in the universities or other teaching institutions mineralogy in the wider sense of including the art of economic development and working of the mines would also then find an honoured place

I have already copiously drawn from the story of the Jatakas in my 1st Chapter to show the importance of minerals in the shape of ornaments and coins in the social

life of the period in which these Jatakas were composed, for the Jatakas are undoubtedly important sources of history, since the social background or setting of their stories reflects the contemporary conditions of life[1] Naturally, therefore, one might have expected to find the study of mineralogy to have obtained an important place in the Jataka accounts of the teaching institutions of ancient India. if mining industry and science were an important factor of the social organisation of India in the days of the Jatakas Dr. Mukherjee has drawn, in his article on Indian Education from the Jatakas, a very vivid and complete picture of the educational institutions of ancient India The enumeration of the subjects of study in the university of Taxila shows that both theoretical and practical subjects were included in the curriculum of that famous university and students from all parts of India flocked in large numbers to avail themselves of the courses of instruction provided at that centre of learning.

The Jatakas make mention of subjects both scientific and technical as studied

1 Dr Radhakumd Mukherjee in the Viswa-Bharati Quarterly for October, 1923—p. 227.

at Taxila The following scientific and technical subjects are mentioned —

(1) Elephant lore, (2) Magic Charms, (3) Spell for bringing back the dead to life, (4) Hunting, (5) Spell for understanding animal cries, (6) Archery, (7) The Art of Prognostication, (8) Charm for commanding all things of sense, (9) Divining from the signs of the body and (10) Medicine[1] We find that elephant lore, hunting, archery and and medicine are mentioned as subjects of study, clearly indicating the practical importance of the knowledge of those matters in the society of the times Kautilya would have us believe that mining was also of great practical and social importance in his time. It is well known that in Kautilya's time Taxila was still the most important Indian university Had Kautilya s position been really true, one might have reasonably expected mineralogy to have been an important subject of study like hunting archery, medicine or elephant lore The absence of mineralogy unmistakably leads to the conclusion that mining was not of much importance in the social economy of those days or even, that mining industry was totally unknown Either positions may be reasonably suggested from the study of the Jatakas

1 Visva Bharati Quarterly for Oct 1923 p 237

The absence of mining as a subject of study indicates that Kautilya did not correctly represent the state of the mining industry and mineralogy in his days. In connexion with the other considerations to which I have drawn attention, I am led to the conviction that, in regard to the mining industry and the science of mining, Kautilya was a pure theoriser.

Mrs. Rhys Davids in an article in the Journal of the Royal Asiatic Society has recorded the results of her studies on the economic condition of Northern-India during the period under consideration mainly from Buddhist sources and she has drawn attention to the existence of miners and Megasthenes also speaks of miners.

Therefore, the first alternative suggested above appears to be true and mining industry of Northern India was not of much economic importance and the Aryans and even the higher classes of the Dravidians or the Kolerians did not engage in it, The Aryans by a native preference were inclined more towards agriculture and commerce than such occupations as require hard labour and unclean or uncongenial surrounding or material ; and even at the present day, the majority of the millions of workers in the Indian mines ethnologically

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belong either to the Dravidian or Kolerian races. So that, it may be inferred that the mining operations, if any, in Northern India were in the hands of the pre-Aryan population of the Dravidian and Kolerian races Ancient mine workings have been discovered in many places which are still the seats of races which are the descendants of the pre Aryans of India Thus, in the district of Singbhum, Nepal, Kangra, Sikkim and Kumaun old copper workings have been discovered[1] Washing of alluvial gold formed the occupation of many people in Northern India as even now we may see in Chotanagpur, Orissa and the Central Provinces The iron industry was in a high state of excellence amongst the pre-Dravidians of India and traces of iron smelting have been discovered in the Deccan[2] Thus, it is apparent that in very ancient times, the pre-Aryans were engaged in mining operations and the Aryans, when they conquered the country instead of adopting the mining industry engaged in the trade in minerals and the Aryan kings simply looked upon the produce of mines

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1 (P Mitra's Pre Historic Arts and Crafts in India—J of Letters, C. U Vol. III., P 212)

2 (P Mitra's Pre-Historic Arts and Crafts in India—J of Letters C. U Vol III., P 214)

as a source of revenue like the produce from the land.

"It is a common error," says Rhys Davids, "to suppose that the tribes with whom the Aryans, in their gradual conquest of India, came into contact, were savages Some were so,........................But there were also settled communities with highly developed social organisation, wealthy enough to excite the cupidity of the invaders, and in many cases, too much addicted to the activities of peace to be able to offer, whenever it came to a fight, prolonged resistance. But they were strong enough to retain, in some instances, qualified independence and in other, to impose upon the new nation that issued from the struggle many of their own ideas, many of the details of their own institutions[1].

It seems to me that in regard to the ownership of land including the surface and the underground the pre-Aryans had been successful in imposing upon the Aryans their juristic ideal of the relation between the King and his subjects and which was that the subject was the owner of the land, both surface and under-ground and the right of the Government, whatever may be its form, was limited to the realis-

1 (Buddhist India—Pages 44—45)

ation of revenue from the products of the earth

This inference is corroborated by the remarks of that accurate observer, the Abbe Dubois, who notices absolute private property in land amongst the Nairs, the Tulus, and the Coorgs, who are three of the prominent non-Aryan tribes of the Western Coast[1]

There is no doubt that the Dravidian and also the pre-Dravidian ideas connected with the question of ownership of land must have been imposed on the Aryan settlers in India, who, at the time they reached India, were more or less nomadic and really sought fresh lands for extensive pastures So, Prof Hopkins says, "Give us wide pastures was their cry[2]

Taken as a whole, the stage of civilisation reached by the earliest Aryan settlers is that of a people devoted to cattle rather than to the plough, those earliest Aryan settlers in India were evidently a pastoral people and the earlier migrations were wholesale tribal movements of both men and women who had to fight out their way and replace the former occupiers of the land by simply ousting them[3] It has now been

1 Hindu Manners, edited by Beauchamp 1897—P 56

2 India Old and New P 208

3 See p 45 of Cambridge His India.

proved beyond doubt that the Dravidian tongue was prevalent in the whole of Northern India before the Aryans came and occupied the country and the conclusion seems irresistible that the Dravidians like the Aryans, the Scithians and other races must have entered India by the North-western route[1].

Now, from the above data, it is quite reasonable to conclude that the Dravidians and Pre-Dravidians had been in occupation of India before the Aryans came and they knew the use of metals and used to extract them from the depth of the mines, had private property in them and their possession was not disturbed by the Aryan conquerers who were obliged to content themselves by the realisation of a *share* of the produce of the mines as the revenue due from a subject; but, perhaps, in many instances, the Aryans conquered lands from the aborigines and distributed the same as booty amongst themselves. This would be the case in regard to a part only of the entire land of the particuler tribe conquered[2]

Now, therefore, there does not remain the slightest doubt that Kautilyan rules

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1 Hopkins, India Old and New, p 208

3 See Bhandarkar Car Lec, 1908, p 25-28, also p 41 and 42, Cambridge Histry of India, Vol 1.

regarding mines were an unwarranted innovation.

Inspite of the profession of reverence for the Sage Vishnu Gupta or Kautilya by Kamandaka, it cannot for a moment be doubted that Kautilya's work was far from being popular and many of his innovations got into desuetude very soon afterwards, assuming that they were really adopted by the Government of the Maurya kings Kamandaka's treatise is deficient in rules relating to the administrative control of trade and commerce[1] This may mean, (a) either the rules of Kautilya in regard to the matter were never practically adopted in the Empire and were merely theoretical, (b) or, if adopted in practice, they soon became obnoxious and fell into desuetude and Kamandaka had to omit them from his treatise

The poet Vana in the 7th Century A D voices forth the popular and emphatic repudiation of the doctrines of Kautilya[2] Many of the institutions described by Kautilya failed to get any stronghold either in the Indian mind or in the Indian administration and the works of later au

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1 See Keith's Article in J R A S 1916

2 See Kadambari quoted by Dr S Sastri in his introduction to the Artha Shastra P X

thorities indicate either a total disappearance of or a radical change effected in such institutions To the list collected by Dr. Shyam Sastri, I may venture to add Kautilya's rules regarding the minerals seeing that his innovations were either not followed or severely criticised and repudiated by subsequent authors[1].

Though the theory of the Royal ownership of mines might have been a timely innovation of the great minister, did he or his master really act upon the principles advocated in the prime-minister s book ? I have suggested above that there could not be any possible doubt that those rules were never introduced by the Maurya rulers and were invented by the Prime-minister to lay some theoretical foundation for the possible usurpation of the abundant mineral-wealth of the South where mines like land belonged to the subject according to the ancient customs of the Dravidians.

V. A Smith in his monograph on the Great Asoka while describing the sources of the revenue of the Emperor does not make any reference whatsoever to the income from the royal mines[2]. It is reasonable to assume

1 P XVIII, & XIX, of Dr S Sastri's introduction to the Artha Shastra

2 See the Chapter, Extent and Administration of the Empire, Asoka by V A Smith, 1919,

that the system of administration ... ation developed by the genius of the 1st Ma... rya Emperor Chandra Gupta with the p... practical and theoretical assistance of the Pri... ly ... was maintained as a whole by ... the minister's son Asoka the Great, although ... his ... supplemented by some novel arrangements & ... slightly modified by certain reforms[1] The learned historian gives the details of the metropolitan administrative commissions with their six Boards and the respective duties of the members of each, he speaks of the land-revenue and refers to Kautilya's theory of the royal ownership of agricultural land[2], but surprisingly enough, does not even mention that seemingly great source of revenue the State Monopoly in mines

Here, I must again draw the reader s attention to the remarks from the Cambridge History Vol 1 p 294 already quoted by me and suggest that the law of minerals contained in the Kautilya does not belong to the time which is assigned to the work of Kautilya as a whole So that it is not unreasonable that these rules were inserted in this great work of Kautilya by a subsequent writer of a later date It seems to me that it might have been about the period of

1 See Asoka by V.A. Smith P 82 89
2 Asoka by V A. Smith P 96

the Gupta Revival when, like the laconic rule of Vishnu's "आकरेभ्य. सर्व्वम् आददात", an up-holder of the new school of theocratic sovereignty inserted these elaborate rules of mineral law which we find in the now extant Artha-Shastra.

From all these considerations discussed by me I think I am justified in taking the positions which I take-viz either, (a) that the theory of the State-Monopoly of mines promulgated by the author of the Artha-Shastra was a mere theory and was never attempted to be practically enforced in the Maurya Empire ; or, (b) that it was a later introduction into the body of Kautilya's Artha-Shastra. My inclination is towards adopting the latter alternative.

But this position that the king was only entitled to a certain share of the produce of the mines may in truth make him no less an owner of the mines in his kingdom than if he had appropriated the whole of the produce of the mines, since, it may be urged that the King is in fact the owner of the mines and the share that he obtains is in the nature of royaly and not revenue If the term भूमि (land) bear the technical sense of both the surface and the subsoil, then it is quite proper to urge that the King as owner of land is legitimately entitled to

the mines and the realisation of a share of the produce thereof cannot in any sense indicate that the ownership of mines rests with the subject

The propositions which I have formulated in the above paragraph raise a matter of supreme importance in the history of mineral rights in India Every reader of the origin and history of land rights is familiar with the fact that in numerous countries of the civilised world the State is in theory the owner of all the land in the country and the subject is regarded merely as the holder of an estate in the land To a student of the history of land tenure in feudal countries the above position is the fundamental basis of the feudal system of land tenure In such countries, land is not the subject of private ownership but of tenure and there is no land in the hands of a subject but is not held directly under the sovereign or under some mesne lord or a succession of mesne lords who or the last of whom holds of the sovereign Thus, in the countries where the feudal system prevailed the King as the lord paramount was the ultimate owner of all land in the country and the tenure of land was based upon the assumption that it was originally granted as a feud by the King to his immedi

ate tenant on condition of certain services and where there was sub-infeudation, the immediate tenant in turn re-granted it[1] So that the position may be legitimately taken up that in Ancient India also the King was the ultimate owner of all land and the share of the mineral produce which he undoubtedly appropriated was by virtue of the existence of the ownership of the land in him and the same was, juristically speaking, not revenue but royalty.

Thus, we are led into a discussion of a very controversial subject in the history of ancient India-viz. the problem of land-tenure and the question if the State owned land in India as it did in the feudal countries of Europe and I propose to devote the next chapter to a consideration of the problem indicated above

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1 See Halsbury's Laws of England Vol 24 pp 138–139 , 2 Blackstone's Commentaries, p 51

CHAPTER VII

THE STATE-vs PRIVATE OWNERSHIP OF LAND

AND

The History of the Ownership of Land _ India

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I have in a previous part slightly indicated that the question of the ownership of land in Hindu Jurisprudence is a perplexing one and three divergent schools of thought have arisen, pleading for the King, the subject and as well as for a joint ownership of both

Vincent Smith has in several places of his writings formulated the doctrine that from the earliest dawn of civilisation in India the King was regarded as the owner of the soil This view has been shared by other eminent authorities Dr Buhler, Dr F Smith, Prof Hopkins and James Mill uphold the position that the right to the soil belonged to the King in ownership who received crown rent from the subjects for the lands held by them

Testimony again is not wanting of very ancient foreign writers on India who des

Prof J N Sammadar subscribes to the dominat foreign view on the question of the ownership of land in India and observes —

"To us it seems that the King was very likely the overlord and also the owner, and the title "one owning all the land is of very great importance[1]

Thus Prof Sammadar adopts the view of Prof Hopkins who says — It was un questioned the King was the owner of all The King is not only the overlord, he is the owner and one of his old titles is the one owning all

Mr K P Jayaswal, a rising Indologist, however, strenuously maintains the view that the people had always been the owner of the soil in India He has discussed the question in a series of articles in the Modern Review[2] Mr Radharaman Mukherjee in his learned article on the "Land tenure in Ancient India takes the same view as does Mr K P Jayaswal[3]

It is not at all surprising that the majority of western scholars should be disposed to take a view on the question of the ownership of the soil which is in agreement with

1 Economic Condition of Ancient India—p.

2 See Modern Review Vol. XIV

3 Calcutta Law Journal Vol. 23 Short notes

the feudal theory of the ownership of land; for, inspite of the overthrow of the feudal system, till recently it was a dominant factor in almost all matters pertaining to society and legislation; it is, therefore, supremely difficult for authors to rise superior to the subtle influence of the civilisation of centuries in the country of their birth. English historians, like English lawyers, live in fæco feodorum[1].

It appears to me, however, that it is difficult to accept any of the three views put forward on the question under discussion.

As regards the view of Elphinstone, there is no hesitation on my part to discard it as a superficial conclusion based on the obvious fact that the usufruct of the land is enjoyed alike by the king and the subject.

The other two views which have till now divided learned opinion on the question are indeed partially correct; but, they suffer from the evil of hasty generalisation, for, it is not true as Vincent Smith and others of the same School say that "the native law of India has always recognised agricultural land as crown property and has admitted the undoubted right of the ruling power to

Maine's Early His. of Inst., P. 88

levy a crown rent or land revenue" In a similar strain Dr F Thomas writes —

"Apart from the royal domains which must have been considerable, the ultimate property in the soil appertained in the sense which has since prevailed, to the king, that is to say, the king was entitled to his revenues therefrom and in default could replace the cultivator in his holding[1]

I cannot also accept as true the view of Messers Wilks Jayaswal and Radharaman Mukherjee that the people had always been the owner of the soil in India It is incumbent upon me, therefore, to critically examine the rival theories, for in my judgment, the ownership of the soil was from time immemorial with the people and the king or the ruling authority was a mere receiver of land tax or revenue, but this position was altered in favour of of the king since the days of the mighty upheaval of Neo Brahmanism in the fourth century A D, from which period of Indian history the king was undoubtedly admitted to be the owner of the soil comprised in his territory

This question of the ownership of land must now occupy our attention for a

1 Cambridge History of India Vol I—I 476

while; at the outset I must delimit the field of investigation; for my immediate object is not to enter that wide and not quite efficiently surveyed realm of the intricate problem of land—tenure in India—of which the origin and growth, inspite of the labours of many a savant of the West and of the East as well, have yet remained almost as obscure as ever. The question which demands my attention is a humbler one and restricts itself to the investigation of the ownership of land in India as between the sovereign and the subject; in other words, the topic of my present discussion is whether the land-tax in India was revenue strictly and properly so called or was it really rent though misnamed as revenue?

We shall misconceive the supreme importance of the question were we to put too much importance on the technical side of the discussion of the question as to whether the land-tax in early ancient India was revenue or rent; the real problem before us lies in the solution of the question of the ownership of the soil in ancient India and we shall then try to trace the steps of the changed position of the conflicting claimants to the ownership of the soil—the sovereign and the people

For as indicated above, I cannot find any reasonable ground to accept the view of Vincent Smith that the native law of India has always recognised agricultural land as being crown property and has admitted the undoubted right of the ruling power to levy a crown-rent or "land revenue[1]".

In support of his position that the native law of India has always regarded agricultural land as crown property, Vincent Smith has relied on the following passage from the Artha Shastra of Kautilya —

"Those who are well versed in the Sastras admit that the King is the owner of both land and water and the people can exercise their right of ownership over all other things excepting those two[2]"

The passage quoted above is a verse which Bhatta Swami reproduces from an unknown authority in supporting Kautilya's rule allowing the King to levy an extra water tax[3]

I am inclined to think that the above passage has not correctly represented the ancient law of India on the question of the ownership of land and water and the

1 Early History 1914, P 131 and also Cambridge History of India Vol. 1 P 475

2 Artha Shastra, Bk. II Ch. 24

3 Artha Shastra, II 12.

considerations which render me unable to accept the position taken up by Bhatta Swami—I now proceed to state.

In the first place, if the author of the commentary had before him ancient authorites to support his position, why has he not referred to them? This significant omission undoubtedly leads one to doubt the genuineness of the position taken up by the author; in fact, the sovereign's ownership of the soil cannot be supported by any recognised authority of the pre-Kautilyan period; some passages from the Vedas might, however, be pointed out; but, I shall try to show that those passages if properly interpreted do not lend the slightest support to the position of the commentator of Kautilya. The position of the Smritis, some of which in their original form existed before the days of Kautilya, on this topic is surprisingly vague, yet the commentator wants his readers to go with the impression that the ownership of land and water by the King is a very well-known and orthodox proposition and every reader of the Shastras knows it and he does not consider it necessary to cite the Shastras, apparently because this position was absolutely beyond the region of controversy, the matter, according to him,

is too elementary to demand citation of authorities But, we shall see that this question of the ownership of land in early times in India is perhaps one of those perplexing topics which the laborius research of a succession of eminent scholars, both Eastern and Western, has not yet been able to lift out of the sea of surging controversy and different schools of thought still maintian their respective views with great ardour with the help of authoritative works from the Vedas down to the latest Smritis and commentaries[1]

State ownership of land seems to be predicated by numerous verses in the Smritis along with Slokas which undoubtedly formulated the theory of the common ownership of land by the subjects The Mimansaks headed by Jaimini uphold the theory that the land does not belong to the State but the State is only entitled to levy a tax on land by appropriating a share of its produce by reason of its protective care and the land and other natural things are common to all

One matter in this connexion, however, I may be permitted to mention in this

1 See Jagamohan's Bidhi's Vagisvara VII Discourse

2 See Jaimini, 6 7 2; and Sabara's & Sayana's commentary on the same.

place; as a matter of fact those texts which really support the view of Kautilya bear date long posterior to the time when Kautilya flourished, even though some commentators of the post-Islamic period still enunciate the older view. To these considerations may be added the avowed position of Kautilya, the right-hand man of the builder of a great India-wide Empire, which naturally inclined him to tacitly assume a theory which would facilitate the imposition of increasing land-tax which has from the very earliest times formed the main resource of the government for efficiently carrying on the work of administration. It is not quite unreasonable to suppose that the commentator of Kautilya, an author of a later century, has put his own ideas into the text of Kautilya while purporting to explain the same, when the idea of the royal ownership of land became a familiar principle in the Schools of Neo-Imperialism in the days of Brahminical renaissance commencing roughly from after the second century of the Christian era[1].

Therefore, we may be justified in holding that the ownership of land as being

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1 See Srikrisna Tarkalankar, quoted in Dr Sen's Hindu Jurisprudence & Brihaspati and Narada quoted by Hopkins in India Old and New p. 221.

vested in the King as deduced from Kautilya may not be an undoubted fact in his time, it would not be unreasonable if we were to suggest that this theory was a timely innovation of Kautilya in furtherance of his empire-building policy which demanded the utilisation of all possible resources to expand and consolidate the imperial power[1] and the dogmatic assertion of Western historians fails to carry the great weight which the conclusions of those eminent authors generally do, but, as it has become a matter of doubt if Jocobi's view of the authorship of the Artha Shastra can be legitimately held, we are in a manner justified in holding as we do, that as a matter of fact the theory of the royal ownership was embodied in the work of the Kautiliya school of politics just at the time when the renaissance took place

Prof Hopkins, however, has more systematically dealt with the question under discussion and he has collected authoratitive passages from the Vedas down to the recent smritis in support of his view[2] We may divide his authorities into two classes—Vedic texts and Smriti texts. So far as the Vedic texts are con

1 Dr Shyam Shastry's Evolution of Indian Polity—P 124
2. See India, Old and New p. 231 etc.

cerned I have shown in the following pages that they surely refer to the political power of the king and supply an authoritative foundation for his right to levy taxes upon land over which he exercised superiority or overlordship apart from ownership I would rather uphold the great Jaimini and his commentators like Sabar-swamy and Sayana when a difference exists between these authorities and Prof Hopkins, though an eminent Scholar, on the interpretation of a Vedic text. Therefore, the Sruti which says "That the king is the owner of the wealth of all save the priests" does not, as Prof. Hopkins thinks, make the king the owner of everything in the territory including land and moveables of all classes of his subjects save the Brahmans; on the contrary, it concerns his authority for correction of the wicked and protection of the good and the right of property is not vested in him as the Mimansakas hold.

So far as the post-Vedic authorities from the Smriti literature are relied upon by Prof. Hopkins, I am in full agreement with him that they undoubtedly support the royal ownership of land. Hopkins relies upon Brihaspati, Narad and Manu. The dates of these authorities, as we find them in the extant works, have been ascertained by

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1 Dr [illegible] of India [illegible] p. 124

2 See [illegible] p. 321 etc.

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high authorities to be certainly after the 3rd or 4th century A D This supports my view of a change in the old theory of popular ownership in favour of the king's ownership of lands

As regards the historian Wilks, I am bound to admit that he had accurately studied the question of the ownership of land in India upon such materials as he could obtain in Mysore and his generalisations, if limited to the portion of southern India under his observation, were indeed correct But the broader proposition which appears to have been enunciated by him[1] cannot, indeed, be supported as his own observations will clearly show though he has been fortified by the opinion of Mr Ellis who supports the same position upon an interpretation of Manu[2]

Wilks has studied thousands of royal grants of land and he has found that in certain grants the king parts merely with the revenue due to the State while in others the king as a matter of fact donates the land itself He finds that in the Carnatic and in the Canara district what the kings purport to grant is simply their revenue or the land tax due to them under the ancient

1 Wilks' History of Mysore, Vol I, p 81 [illegible]
2 [illegible]
[illegible] Mysore [illegible]

common law of India. This is due to the circumstance, as I have shown below, that the process of Aryanisation did not affect the land system of the Carnatic and Canara and the central and southern portions of Peninsular India[1]. From the fact observed by Mr. Wilks that the royal grants of Hindustan (he evidently means Northern India) and the centre of the Southern Peninsula confer on the grantee the land also, wheras in the southern portion of the Peninsular India such grants merely convey the right to the royal revenue, he should have inferred that some change had been effected in the position of the king as regards his relation to the land in the territory, which supplanted the right of the people so that the broad proposition submitted by him had ceased to be true of India

The Greek authorities need not detain us long , Mr Wilks upon an analysis of their statements on this question has shown clearly that they do not speak with a certain voice and are also self-contradictory and unworthy of the credit due to the scientific historian[2].

I must not, however, fail to notice the position of Dr. Sen on this question of the

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P 81 of History of Mysore Vol 1, Wilks

See Wilks' History of Mysore vol 1, pp 70-71.

ownership of the soil in India, but, the learned Doctor treats the question from the point of view of an analytical jurist and refuses to be led into any historical speculation on the origin and growth of the right. I have in a subsequent portion of this chapter made copious extracts from his Hindu Jurisprudence I shall here content myself with the observation that he seems to be of opinion that the people originally were the owners of the soil in the settled portions of the territory but, sometime in the evolution of society in India, the position was altered undoubtedly in regard to the unoccupied portions of the royal territory and the crown lands[1]

Juristic analysis of the relation between the king and the subjects in the settled and occupied parts of the territory stands in the way of the learned Doctor s adopting an entire change of the policy of Hindu Jurisprudence on the question of the ownership of the soil in favour of the king, and his principal reason appears to be that the Smritis do not afford any legitimate basis for upholding any such change[2]

I venture to submit however that the later Smritis speak very explicitly in

1 (See Pp 31-37 Dr Sen s Hindu Jurisprudence)
2 (See I [illegible] Hindu Jurisprudence)

favour of the king's ownership of the soil as I have shown here and therefore, I have been led to a different conclusion on textual and historical considerations. It would not be out of place here to place before the reader a portion of the illuminating researches of the lamented Hindu Jurist—Dr. Priyanath Sen on the question of the ownership of the soil as handled by Hindu lawyers. Dr. Sen says :—

"In most cases, the solution of this question is not found to be beset with much difficulty, for we can generally trace the mode in which these subordinate elements of ownership constituting 'jura in re aliena' have been carved out and transferred to different individuals, while the residuary right of ownership has remained where it was. There may, however, be cases where the question may not be altogether free from doubt or difficulty ; as an instance, I may refer to the interesting discussion about the nature of the king's right in the soil within his dominion, which is owned and occupied by private individuals. The discussion is containd in the Viswajidadhikarana of the Mimansa, and the more widely recognised opinion seems to be that the private individuals are the true owners of the soil, the title of the king being generally

limited to the right of collecting revenue from them Nilkantha in his Vyavahara-mayukha and Srikrishna Tarkalankar in his commentary on the Dayabhaga seem to endorse this view and regard the *bhoumikas* (Landlords) as the real owners of the soil held by them while they ascribe to the king merely the right to collect revenue from the landlords as representing his proper share of the produce of the soil to which he becomes entitled by reason of the protection which he affords to them in the peaceful enjoyment of their property Jagannath however seems to contend that, looking at the origin of the proprietary right this limited conception of the right of the sovereign is not justifiable, he maintains that if ownership primarily arose from first occupation it would be more reasonable to suppose that the sovereign being the stronger party would have the prevalent right such rights as the subjects possessed being permissive in their character and terminable at his option by the withdrawal of the permission at the end of the year It is thus curious to observe that the more modern view gives a greater latitude to the rights of the sovereign as opposed to the rights of the people and it may no be unreasonable to presume that

this was to some extent due to the influence of foreign domination which had effected an alteration in the conception of sovereignty among the Hindus

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The view of Jagannath that private owners might be regarded as if they were so many lessees from year to year finds very little support from the Dharma-Shastras which, although they dilate upon the divine character of the sovereign and the reverence due to his position, do not furnish any basis for maintaining that he was the absolute master of his territory, free to deal with the lands within his dominion in any way he liked to the prejudice of the settled rights of his subjects It must, however, be understood that I am not here speaking of the king's private lands over which he had complete and absolute control , it may also be that with regard to lands within his dominion which had not been appropriated by private owners as their own, his right was supreme and superseded the claim of his subjects , but, as regards lands under private ownership his right was limited by the concurrent rights inhering in private owners How and when the right of the sovereign came to be limited in this way it is difficult to explain, and I

correctly guessed, these works written in the official script of the Hindu revival bear evident traces of manipulation by the Publicity Department of the day[1].

The evil of exclusive reliance on Sanscritistic material and on the history of upper India as depicted in the pages of the Brahman writers of Northern India has been pointed out by the late Prof. Sundaram Pillai in the following words —

"The attempt to find the basic element of Hindu civilisation by a study of Sanskrit and the history of Sanskrit in upper India is to begin the problem at its worst and most complicated point. India, south of the Vindyas—the Peninsular India, still continues to be India Proper Here, the bulk of the people continue distinctly to retain their pre-Aryan features, their pre Aryan languages, their pre-Aryan social institutions. Even here the process of Aryanisation has gone indeed too far to leave it easy for the historian to distinguish the native warp from the foreign woof. But, if there is anywhere any chance of successful disentanglement, it is in the South; and further south we go the larger does the chance grow.

1. See Viswa—Bharati Quarterly, Kartick 1330 B, S

The scientific historian of India ought to begin his study with the basin of the Krishna, of the Kavery, of the Vaigari, rather than with the Gangetic plain, as it has been now long, too long the fashion.[1]"

It appears to me that the procedure indicated by the learned writer in the above passage is the surest method to determine the primary idea of the system of land tenure in the earliest period of Indian history and also the earliest relation between the sovereign and the subject in regard to land, in fact, the basic element of land tenure we are likely to find in those parts of India where the people have retained the pre-Aryan features of their social and economic institutions to a greater degree than in those parts where the process of Aryanisation has proceeded far enough for a modern enquirer to disentangle the original institution from the ulterior form which it might have assumed with the progress of the Aryanisation of India. When the scientific historian of the Indian system of land tenure has been able to discover the original form of the relation between the sovereign and the subject as regards land he would then be in a

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1 Quoted by Dr V Smith in his History of Ancient India from Tamilian Antiquary No 2 (1[illegible]) P [illegible]

position to trace the subsequent vicissitudes of the relation through the long ages of history ; in that task, the Sanskritistic materials will certainly stand him in good stead for the purpose of discovering the influence of Aryanisation on the system of primitive land-tenure. It will be our aim in the following pages, therefore, to discover, if possible, the pre-Aryan form of the relation between the sovereign and the subject in regard to land, since, in the view that I shall try to substantiate, the original form of the pre-Aryan land-tenure supplied both the basic idea and the fundamental fact which had been adopted and utilised by the Aryan immigrants for political and administrative purposes for many centuries.

Authorities differ very widely as to when the Aryan immigration into India first began and when it ceased ; but they are unanimous in the view that in the course of centuries a process of assimilation went on by which eventually the Indo-Aryan village system was evolved, having for its foundation the communal principle of the primitive Dravidian foregin settlement and for its superstructure the higher culture and organisation created by the Aryan genius and dominated by Aryan spiritual ideals[1].

1. See Aryan Rule in India by E B Havel P. 15.

The basic principle of land-tenure continued to be an adaptation of the indigenous primitive communal ownership of the Dravidian people for centuries until the time of the Brahminical renaissance in the fourth century A. D from which period may be noticed a radical change of view point on the question of the ownership of land through the coalition of Rajas and Brahmins, which circumstance stands out as the most remarkable feature of Indian civilisation all through the post Buddhistic period of Indian history

The Aryan conquest of India was of a radically different nature from the conquest of England by the Anglo Saxon races This difference is one of the most important facts the significance of which had not been critically examined and utilised by the historians who investigated the institutions, social and religious, political and legal, of ancient India It had been taken for granted as if the Aryan conquest of India was in the main a wholesale substitution of the races speaking the Aryan dialect in the place of those mere savages who preoccupied the Indian continent and as if after a futile struggle those pre Aryan residents of India succumbed or gave way and thenceforward became the slaves of their Aryan

masters. If that were the true history of the nature of the Aryan occupation of India, there would have been no flaw in the derivation of ancient Indian social, moral, legal, and political institutions from purely Aryan sources. The *catholicity* of spirit which the Aryan mind displays in the Atma Sukta finds its external manifestation in unnecessary non-violence towards other races which ultimately saved them from total extermination[1].

In support of my position I rely upon the observations of the historian John Richard Green who says[2] :—

"The victory of Aylesford did more than give East Kent to the English ; it struck the key-note of the whole conquest of Britain. The massacre which followed the battle indicated at once the merciless nature of the struggle which had begun. While the wealthier Kentish land-owners fled in panic over sea, the poorer Britons took refuge in hill and forest till hunger drove them from their lurking places to be cut down or enslaved by their conquerors It was in vain that some sought shelter within the walls of their churches ; for the

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1 Atma-Sukta of the Rig-Veda Rig. 4-42

2 Green's Short History of the English People Part 1 Pp 9-10 Edition dated 1888

rage of the English seems to have burned fiercest against the clergy The priests were slain at the altar, the churches fired, the peasants driven by the flames to fling themselves on a ring of pitiless steel It is a picture such as this which distinguishes the conquest of Britain from that of the other provinces of Rome The conquest of Gaul by the Frank or of Italy by the Lombard proved little more than a forcible settlement of the one or the other among tributary subjects who were destined in a long course of ages to absorb their conquerors French is the tongue, not of the Frank but of the Gaul whom he overcame, and the fair hair of the Lombard is now all but unknown in Lombardy But the English conquest for a hundred and fifty years was a sheer disposition and driving back of the people whom the English conquered In the world wide struggle between Rome and the German invaders no land was so stubbornly fought for or so hardly won The conquest of Britain was indeed only partly wrought out after two centuries of bitter warfare But it was just through the long and merciless nature of the struggle that of all the German conquests this proved the most thorough and complete So far as the English sword in these earliest days reached,

Britain became England, a land, that is, not of Britons, but of Englishmen * * * * * When the steady progress of English conquest was stayed for a while by civil wars a century and half after Aylesford, the Briton had disappeared from half of the land, which had been his own, and the tongue, the religion, the laws of his English conqueror reigned without a rival from Essex to the peak of Derbyshire and the mouth of the Severn, and from the British Channel to the Firth of Forth "--

But, the modern science of Indian Anthropology tells a story which absolutely discredits the idea of total or almost total extermination of pre-Aryan races that inhabited India before the advent of the Aryan-speaking races. So E. B. Havel remarks :—

"The Aryan conquest of India, on the other hand, was no war of extermination, fierce and bitter though the struggle may have been at the beginning; the pioneers of Indo-Aryan civilisation, like their fellow-Aryans in Southern Europe, won their way even more effectually by their superior intellectual qualities than by their fighting strength. Though for many centuries holding themselves proudly aloof from the non-Aryan races and jealously guarding

their spiritual inheritance from profanation by the un-initiated, their laws, political institutions and religious ideas gradually became, for the majority of the people, the warp and weft of Indian life, even for the millions in whose veins no trace of Aryan blood can now be found,[1]

These remarks of the learned author contain much true observation upon the process of the growth of the Aryanisation of the races inhabiting India and he further observes —

the Aryans were always numerically a very minute fraction of the people of India, and even among those who called themselves Aryan there were many of mixed blood It was by spiritual rather than physical ties that the Aryans and Non Aryans were gradually bound together into a political unity with an abiding sense of Nationality,[2] —

The position taken up above is generally true though some at least of the pre Aryan inhabitants of India developed a civilisation which was rather high for those ancient times and these races were not an unequal match for the Aryan new comers to their country

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1 Aryan Rule in India p [illegible]
2 Aryan Rule in India [illegible]

The Rig-Veda contains numerous passages which clearly narrate the tale of this desparate struggle between the Aryans and the pre-Aryans for supremacy. It is apparent that for a time the fate of the struggle was undecided, for a Vedic Rishi invokes the God Indra to root up the race of Rakshasas[1] and blames the God for behaving as if he were wavering ; and "more important by far, it may be believed, than the warfare of the peoples who called themselves Aryans were their contests with the aborigines, the Dasas or Dasyus[2]

In the Rig Veda we find that mention is made of individual Dasas such as Ilibisa, Dhuni, Churmin, Pipru and others as well as of *Dasa* tribes like Simyus who have fought against Sudas in the battle of the ten tribes. It would appear for a perusal of the Rig Veda that the overthrow of the black skin was the most important exploit of the Vedic Indian. Vedas also indicate the intense hatred which the Aryan settlers cherished for these Dasa tribes and outbursts of indignation were directed against their disbelief, their failure to sacrifice and their impiety The Vedas also show that these tribes had their own special

1 Rig 8 30 17

2 Cambridge His of India Vol 1 p 84

method of worship, town planning etc In fact the main notices of the Rig Veda of these pre-Aryans are those of conflicts against the Dasas and the crossing of rivers to win new lands from them, it is clear that the Aryans did not (possibly could not) attempt a wholesale extermination of the Dasa tribes. Some undoubtedly fled, some were captured and enslaved, while the majority offered a deadly resistance to the Aryans.

In course of time, friendly relations got established and apparently, Dasas are seen to fight the Aryans' battles against their Aryan enemies So that we recognise that in the age of the Rig Veda there was going on a steady process of amalgamation of the Aryans and the aborigines either through inter marriage or through the growth of friendly social relations between the Aryans and powerful Dasa tribes[1]

As regards the civilisation of the pre-Aryan tribes we got only glimpses from the Vedic texts but no definite or systematic information We are merely informed that they had large herds of cattle and fortifications they enjoyed settled life in villages and practised agriculture Mr Sarat Chandra Roy has studied the history

1 [illegible]

of one of these pre-Aryan tribes in his well-known work "The Mundas and their Country." Let us see what this learned author thinks about the stage of civilisation which the Mundas reached in the age of the Rig-Veda.

Speaking of the Kol tribe, Mr. Sarat Chandra Roy in his well-known work on the Mundas summarises the indications which the Rig Veda gives of the state of civilisation of the pre-Aryan people :—

" The scanty glimpses of light afforded by the Rig-Veda into the then state of the Kol tribes reveal a degree of progress in Arts and civilisation that must have taken the Kols a considerable time to work out. Several of these tribes appear to have already passed from the primitive hunting stage and the succeeding stage of nomad farmers to that of founders of permanent villages [1]"

The Rig Veda describes the castles of the pre-Aryan opponents Tribal organisation was also an accomplished feature of their society. Settled life in a village shows clearly that the Kolarians had become agriculturists before the advent of the Aryans. After describing with reference to the Rig-Vedic texts the details of the civilisation attained by the Kol tribes, their

1 Mundas & their country—p 55 56

commonwealth with a chief at the head, their strong iron-cities, their patriarchal family organisation with a highly developed marriage system their wealth which drew forth the envy of the Aryans, the learned author proceeds in the following manner — 'Such were the peoples whom the vigorous Aryan race from the colder regions of the north encountered in India and with whom they engaged in a life and death struggle for supremacy'[1]

The ultimate result of the struggle was a real compromise and a mixture of the pre Aryans with the Aryans in most parts of India as Indian ethnology amply testifies Mr Rama Prosad Chanda upon consideration of all [illegible] materials and upon ethnological considerations concludes that the Aryan conquest of India did not mean the extermination of pre-Aryans from the country but really tended rather to a compromise between the two races. He says — The Nishads were too numerous to be annihilated and too powerful to be enslaved or expelled *en masse* The Aryans were therefore compelled to meet them half way

If the evolution of the races found in Modern India conceals such a story of

[1] [illegible]
[2] [illegible] Arya [illegible]

their origin, it is no idle theory to suggest that the legal and political institutions of Ancient India would, if scientifically investigated, reveal a story of their origin and development radically different from the accounts currently adopted[1].

A mere logical analysis of the present day social and legal institutions will surely fail to give us a true insight into these institutions and will be barren of any satisfactory result ; for legal and social institutions have not been modelled on the rules of logic but have grown gradually with the growth or even with the decay of society ; these institutions are but the last terms in a long and complicated series and must therefore be studied historically and their progress traced from their roots which lie in the dim and misty past Law and history must surely join hands and their union will be followed by the happiest of results. We have now learnt that our institutions are not lifeless subjects, but must be examined as a continuous growth.

The law embodies the story of a people's development through centuries and it cannot be properly understood if it be examined as if it contained only the axioms and corrolaries of a book of mathe-

[1] See Mayne's Hindu Law Ch 1

matics or of logic. Indeed, as has been remarked by Holmes Jr.—"the life of the law has not been logic but experience." The rules by which men should be governed depend more largely on the felt necessities of the time, the prevalent moral and political theories and intuitions of public policy rather than on the consistency of logical syllogism. Scientific Jurisprudence therefore must enlarge its borders and draw within its pale historical and antiquarian problems; in fact, we must proceed by a cautious application of the doctrine of evolution.[1]

In fact, Dr. Priyanath Sen's conclusion on this topic having been based on purely Sanskritistic materials, was perhaps incorrect. He did not enlarge the scope of his enquiries by having recourse to historical and anthropological materials for the elucidation of the problem of the ownership of the soil in India.

The investigation must start with the attempt to ascertain the true nature of the Aryan conquest of India. Sir William Hunter's pregnant suggestion on this subject is worthy of careful consideration; but it has not attracted that amount of

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[1] See [illegible] The Law of Mortgage in India [illegible] Common Law [illegible]

attention which it deserved. In describing the Aryan occupation of Orissa, that learned author says :—

> "It discloses no trace of the universal and absolute conquest by which the Aryan (primitive) settlers in Northern Hindustan are assumed to have subdued the whole continent to their sway, it exhibits the natural compromise by which a small but gifted people effected their entrance among vastly more numerous races, sometimes indeed, by force of arms, but generally by an amalgamation which the vanity of later ages has more or less disguised[1]"

Sir William's suggestion with regard to Orissa which was a comparatively late acquisition of the Aryan race in India is universally applicable as the *Modus Operandi* of the process of Aryanisation of India which was, before the advent of the Aryans, largely populated by races of men of different ethnical stock. For even in modern India, though 140 millions speak Aryan languages yet the actual descendants of the Aryans are few and are represented

1 Hunter's Orissa, Vol I P 242

by certain Rajput families and by the Brahmans of Kasi and some other cities on the Ganges[1] This thesis might be very well illustrated by the map which Sir Herbert Risley has published in his illuminating work 'the Peoples of India.' A glance at that map will clearly indicate the extent to which the Aryan stock is represented in the various areas of India A student of history might, therefore, be naturally led into a consideration of the underlying fact which has produced such difference in the proportion of the Aryan element in the different race-areas of the Indian continent, paying at the same time careful and scrutinising regard to the known elements of the culture of the Aryan and pre-Aryan races in India The amalgamation of the races, wherever it has taken place in the history of the world when a more vigorous though less numerous race had come to occupy the dominant and ruling position, (as the Aryans in many places in India must have done) in a country peopled by a more numerous though less civilised or less vitally strong race of men has proceeded upon the line of adaptation and assimilation which in the end, evolved a culture which is purely neither of the new race

1 I. Taylor, Origin of the Aryans, [illegible]

nor of the older one The history of English civilisation since the so-called conquest of England by the Normans will surely supply an undoubted historical parallel to bear me out in my suggestion.

Baden Powell has observed that generally where there is a considerable preponderance of the pre-Aryan element in the population there the majority of the people form an agricultural community The ethnical data in such villages of Northern India if analysed will disclose the following suggestive facts[1] :—

(a) Upper stratum of Aryan race—military men and *Brahmans*.

(b) considerable number of mixed population (employed in business and trades).

(c) Great mass of labouring and agricultural population—mostly connected with the pre-Aryan race—element.

In these villages of Northern India, Baden-Powell has shown that the prevailing form of land-organisation is of the land-lord type as opposed to the ryotwary type of villages in the area of the purely Dravidian race as shown in the map of

1 Vill Com P 87-[illegible]

Risley to which a previous reference was made[1]

These two types of the form of land-holding are pregnant with suggestion on the question of the original system of land-tenure in Ancient India and might suggest the solution of the vexed problem of the ownership of land in India in ancient times before the Aryanising process has had time to operate on the indigenous system

What is the prime cause of this difference which has served as the basis of the land revenue system of ancient as well as even of modern India?

Amongst the non-Aryan races of India the traditional idea is still dominant that the soil of the country which they inhabit belongs to them and the sovereign is entitled to a portion of the produce as revenue only that land whether cultivated or waste belonged to the people was the rule in India amongst the pre Aryan population does not admit of any reasonable doubt whatsoever[2] In this connexion local tradition of the non Aryan population may be taken into consideration for I think immemorial traditions are of

1 [illegible]

2 [illegible]

immense value in ascertaining the original ideas which people cherished in regard to the ownership of land Badon Powell, who had studied the problems arising in connexion with the ownership and assessment of the land in India with painstaking thoroughness and illuminating results, counts local tradition as a valuable source of information in regard to the problem of land-ownership[1].

Here the reader may be requested to take note of the rule laid down by Schlegel with regard to the investigation of Ancient History ; the German Philosopher says— ' Historical tradition must never be abandoned in the philosophy of history, otherwise we lose firm ground and footing[2]".

Mr Sarada Charan Mitter in his Land-laws says that "the Mundas of Chotanagpur, who claim as a nation to be the first occupiers of the soil, are so strong in their opinion that they have contested the right of the Rajas (of the Nag Family) to let out on lease the forests which afford timber. The Mundas think that they have exclusive right to the timber which grows

1 Indian Vill Com P 92

2 Philosophy of History, translated by J B Robertson, P. 71, see also P 81.

in the primeval forests of the hill tracts and the King or Zemindar is only entitled to levy tax[1]

The view of Mr Justice Sarada Charan Mitter is in accord with the result of the recent researches of Mr Sarat Chandra Roy who describes how the Munda's notion of ownership of the soil arose and how the original settler in the primeval forest became the owner of the area made cultivable by his own exertions[2]

In Tanjore Canara and in other parts of the Dravidian race area the right of the subject to the ownership of the soil was recognised by the Hindu Governments[3] Mr Wilks in his history of Mysore comes also to a similar conclusion on this subject of the ownership of the soil[4]

History of land tenure in Rajputana also shows that there the people considered themselves to be the owners of the soil and the king was entitled to a share of the produce for protection[5] The following couplet current in Rajasthana shows the ancient law very clearly —

Bhogra Dhani Rajho
Bhomra Dhani Mucho

1 [illegible]
2 [illegible] Mu[illegible] and their Country
3 [illegible]
4 [illegible]
5 [illegible]

This ancient adage when translated would run thus :—

"The government is owner of revenue, but I am master of land"

Rajputana, therefore, furnishes another illustration of the theory that in very ancient times commencing from the pre-Aryan days, the inhabitants of the Indian peninsula considered the soil of the country to belong to them, for, so far as Rajasthan is concerned, we must not forget the fact that modern Rajputs are late comers in Raj-putana which for long ages was inhabited by races who did not come out of the Aryan stock and were ethnologically akin to the pre-Aryan Indian races like the Dravidians and Kolarians ; thus, it is no surprise whatsoever to witness the system of the Khandesh, the Karnatic, the Tanjor and Canara to flourish in Rajputana[1]

Isac Taylor says that it is tolerably clear that the undivided Aryans did not reach the agricultural stage of civilisation and the Asiatic Aryans had not advanced beyond the pastoral stage at the time of separation[2]. From a study of culture-words common to the Iranian and the Indian branch of the Aryan race, it appears that

1 See P 1152 & 1153 of Todds' Raj-sthan, A C Ukils Edition

2 P. 166 & 167 & 196—Origin of the Aryans

even at the time of their separation, though they reached a higher degree of civilisation, yet the Asiatic Aryans were purely pastoral in their occupation and there is no common culture-word denoting agriculture[1]

The pre Aryans of India developed a good system of agriculture and having regard to the number of the population of India in those times as compared with the number of the Aryan invaders, (who by the way were not agriculturists till they had come to India but were merely pastoral in their occupation)[2] it is quite conceivable that the Aryans could not, even if they would, disturb the existing system of land tenure in the country in which their position was primarily one of over lordship and governmental[3]

Dr Sham Shastri after a careful consideration of Vedic texts concludes that individual ownership of land in severalty was an established custom in Vedic India and the frequent attempt at sacrificial performance for the possession of a *Grama* and *Kshetra* must necessarily be rather for its overlordship than for the actual tangible

1 I. Taylor, Origin of the Aryans [illegible]
2 [illegible] Evolution of Land [illegible] by Dr Sham Sastri P [illegible]
3 [illegible] Vol I [illegible] P 316 Hopkins, India Old & New [illegible]

possession thereof[1]. That this was the relative position of the Aryans and the pre-Aryans of India in the early stage of the Aryan invasion is the conclusion of Baden-Powell also who observes as follows . –

"We may, therefore, accept it as established by a number of separate considerations that the Aryans were numerous enough to be rulers and to have armies, but not more, that the indigenous people were partly barbarous and partly not, that they were localised and that the existing settlements occupied the best parts in the country, having great stretches of forests and hilly jungle clad country either wholly or partly inhabited by nomad tribes[2]."

Abbe Dubois also observes that, in the part of Southern India which fell under his observation, the original Dravidian people claimed the ownership of land and such ownership was recognised by the Government of the country[3].

From Baden Powell's classification of the area where the land-lord type of villages prevails and that where the Ryotary system prevails (made on the basis of race-area), it is quite clear that in the

1 Evolution of Indian Polity—Pages 14—15.
2 Indian Village Community P 84 & 85
3 See Hindu Manners P 56, edited by Beauchamps, 1906

Dravidian and other pre-Aryan population—area the Ryotary system prevails, this circumstance can but admit of one explanation if we take the further fact into our consideration that in the area where the Ryotary system prevails, the process of Aryanisation was comparatively less advanced than in those areas where the other system obtains The explanation is that the system of land tenure in countries included in the non Aryan race area had to be devised for a people who owned the land, paying a *share of the produce* as *land tax* to the Government Land lord type of villages indicates the operation of a well-known rule which has been found in all times in the history of the world whereby the ownership of the conquered race in respect of land got reduced to some sort of tenancy under the conqueror[1] and therefore, the mere over lordship in India in the course of time got changed into ownership and the owners of a by gone time became mere tenants add to this the change in the theory of sovereignty and the necessary consequence of this change (a matter I have discussed in detail later on)

The Aryans in the early centuries of their occupation of the position of rulers

[1] [illegible]

in India, had to base their political organisations on the existing institutions of the country and were under the strongest necessity to adapt them to their position as political rulers They had to recognise the ownership of land as being vested in the people and had to content themselves with the tax which they levied upon land as conquerors; it seems quite likely that the art of agriculture also had been learnt from, or at least their knowledge thereof had been much enriched by, their contact with the pre-Aryan population in India. Here I should note the view of Mr Sarat Ch. Roy[1] who says that "before the Aryans came into India, the Mundas and other Kol tribes do not appear to have been cultivators," his reason is that Munda words denoting agriculture are mainly borrowed from Sanskrit It is difficult to follow the learned author in this matter If we bear in mind the conclusion of Isac Taylor quoted previously, we think we may with more reason perhaps suggest that the Aryans borrowed the technical terms of agriculture from their non-Aryan neighbours; this seems to be the more probable state of things and the conclusion of Baden Powell seems therefore to be very right

1 P. 101, Mundas and their Country

"that the Aryans owe much more than we have hitherto supposed to the indigenous races"[1]

It seems therefore, that the land in India belonged to the people from the very earliest times and that the Aryans had to organise their system of land revenue administration on this basis of fact

The records of Aryan thought from the earliest times also indicate this to have been the fact. The Vedas, the primary record of Aryan life and thought in India, also lead to this conclusion

The passage of the Krishna Yajus[2] quoted by Dr Shyam Sastri shows that in the Aryan political organisation the State was the over lord in respect of villages[3]

The Aitareya Aranyaka subjects land to taxation along with horse and kine The Atharva Veda[4] holds out the same doctrine The following verse indicates the view that land belongs to the people —

> 'Give him a share in village kine and horses'
>
> And leave enemy without a portion' —

1 Indian Village Com[illegible] [illegible] Davids [illegible] India P 41 & 42
2 [illegible]

This is significant enough and destroys the position that from the earliest times the Aryans regarded that the King was the owner of land It is noticeable that villages and cattle are put on the same footing which clearly refutes the argument that the King was the supreme land-owner[1], though in the authoritative opinion of Macdonell and Keith the Vedic texts relevant to the question under discussion do not remove the obscurity which clustered up around the problem of the ownership of land[2] But it seems to me if the obscure or equivocal texts of the Vedic literature bearing on the question of the ownership of land be considered along with the position that when the Aryans came to India they found a system of land-tenure in existence which recognised the ownership of the soil to belong to the cultivator or possessor thereof and that necessity and policy alike dictated the recognition of this principle as a base whereon to raise the fabric of their rule, the obscurity would vanish at once and such equivocal or obscure texts would seem to indicate only the embodiment of those fundamental principles on which the Aryan political organisation must neces-

1 (Macdonell and Keith, Vedic Index Vol. 1 P 212)
2 (Vedic Index Vol 1 P 214)

early have been built up For instance, the description of the King, "as the one owning all as 'the devourer of his people as 'eating the rich'" and other such expressions which occur in the Vedas, really denote the position of the King to be the politically supreme person in the state and supply a legitimate basis for the right of the King to levy taxes from all his subjects unless otherwise restrained as he undoubtedly was in the case of the priestly class

Though the material for a reconstruction of the political organisation of early *Vedic* Society is painfully scanty it is at the same time quite clear from the Vedas that the main features of the governmental organisation could be traced with sufficient clearness Vedic tribes lived under a hereditary King who was the Vispati or head of the people and as such led his people against his Aryan and aboriginal enemies in those constant warfares which were characteristic of all early communities It was his duty to protect his subjects and it was also necessary for him to maintain a position of dignity and supremacy —therefore from his subjects he was marked out by his glittering apparel his palace and his retinue To maintain his position and to protect people

[illegible]

he, of course, needed funds He realised tributes from the conquered tribes and large booty in land, cattle and slaves was meted out to him. Offerings of his subjects were originally voluntary gifts—and in these gifts we find the compulsory taxes of a future date which justify the expressions descriptive of the King mentioned above. But there is nothing in the Rig-Veda to support the notion that the King was the owner of the land[1]

Messrs Macdonell and Keith find a parallel to this position in South Africa[2] where though according to tribal law the land belonged to the people the Kings have, for purposes of personal gain, introduced the practice of dealing with it as if they were absolute owners thereof

This conclusion seems irresistible when it receives additional weight from a consideration of the evidence of the Aryan people in other parts of the world. This method of comparison is eminently permissible and adds the weight of conviction to the result obtained from the consideration of Indian sources alone[3]. Neither in Greece nor in Rome nor in Anglo-Saxon England the land

1 (Cambridge History of India vol 1-P- 94 95)

2 See Vedic Index Vol 1 P 215

3 See P 125, Cambridge History of India, Vol 1

originally belonged to the King as owner[1] Curiously enough, in the subsequent progress of these Aryan races (notably in England and in Rome) the idea of state-ownership gained ground over the older theory of the ownership of land by the people The history of the Aryans in India also repeats the same tale as we shall try to explain shortly

During the period represented by the later Sanhitas and Brahmanas and Upanishads and Aranyakas, it is assumed by certain authors that the King became endowed with the ownership of the lands in the country and there are some texts which lend apparent support to this view[2]

The above position was thus summarised in the Cambridge History of India — 'The Vaisya is described as "tributary to another, to be lived on by another, and to be oppressed at will From the point of the Kshatriya this indicates the fact that the exactions of the King from the commoners of the tribe were limited only by practical considerations of expediency the commoner had no legal right to his land holding or to his private property if the King decided to take them from him,

1 [illegible] and his Ages p [illegible] English Historical Review [illegible]

2 (See Cambridge History of India, vol. 1 p 129)

and if he was allowed to retain them, he paid for them in tribute and in the duty of supporting others. This refers, no doubt, to the King's privilege of assigning to his nobles the right to receive food from the common people, and thus of making provision for the maintenance of the nobility, who assisted him in the protection of the country and in the administration and conduct of justice. By this means, the nobles came more and more to occupy the position of land-holders under the King while the Vaicyas assimiliated to the position of tenants." To my mind, the inference drawn as to royal ownership from the text above cited is unwarrant-able and I have submitted before the legitimate signficance of texts like the above in the history of Aryan politico-legal organisation.

The attribution of arbitrary powers of the most extraordinary kind is not warranted by the Vedic or Post-Vedic literature of our country. On the contrary, there is evidence in ancient literature itself of the the highly moral character of the authority by which the Kings governed the country. I have already sufficiently discussed the position of the Kings in the ancient Indian Constitution with reference to Sanskrit-

texts which to my mind, establish the moral character of the royal authority, and the position is well established that the kings ruled not because of might alone but by virtue of moral force and the texts refer to political superiority rather than to ownership proper and the grants of land were simply the grants of the royal privilege to obtain taxes from the cultivators

On the foundation of texts like the above was built up the undoubted right of the sovereign to take a share of the produce of the soil In the Rig-Veda this text occurs —

'May Indra ordain that your subjects pay you Vali (tax)

The Upanisheds also are not wanting in texts of like import[1]

The kings therefore had not been the ultimate owners of land up to this period as is asserted by western scholars and the ownership of land belonged to the people subject to the right of the Crown to levy land tax or revenue, in fact the kings of India always allowed the people—90 p c. or more of whom had always lived in India in villages—to be almost autonomous provided the village headman paid the

1 [illegible]

regular contribution in the shape of taxes to maintain the government[1].

In the next place, a question of great importance arises—What was the nature of this ownership? We are unable to discover that period when land was the collective property of the community, but the arable land was found divided between the various households; pasture lands used to be partially divided; only the waste remained the collective property of the community; previous even to this stage, there was the period when private ownership was allowed in moveables and cattle but land remained *res extra commerciam*, but subsequently, even when arable land was divided amongst the households the lands falling to the share of each house-hold was liable to periodical re-distribution, there was therefore no absolute property of the house-holder in it But in course of time, such individual ownership grew in land as would satisfy the conception of absolute ownership of even the most critical analytical jurist. The early stages of individualisation of the property in land may be traced in the literature of the Vedic and post-Vedic period. In the Manu Sanhita, the discussion about boundaries relates to

1 (See P 267, Cambridge History of India Vol 1)

boundaries of villages which might imply that the village community was the owner of the village holdings—though Manu also shows that private ownership in land under the over lordship of the king was in existence Gautama says "animals lands and females can not be lost by possession of another[1]

This indicates the existence of private ownership in land Earlier traces of communal ownership is seen in the collective property in about 600 feet of land surrounding the village on all sides[2]

There are Slokas in Manu which indicate the existence of private ownership in fields[3]

The private ownership of land may also be inferred from Slokas 239 and 243 of the Eighth chapter of Manu[4]

But the ownership of the people themselves in land such as we find in the Vedic literature was of a restricted character and would not satisfy the notion of ownership of either the Roman or the modern Jurist

The power of disposition over land was a very limited one In the Satapatha

1 [illegible] XII– [illegible]
2 (Manu [illegible] VIII–[illegible] [illegible])
3 ([illegible] IX [illegible])
4 ([illegible] [illegible] to Mr Wilks Mysore History [illegible] [illegible]) [illegible]

Brahman, we notice an instance of gift of land to a priest but it was condemned[1].

Land was regarded as a special kind of property and the owner was not authorised to lightly give it away or part with it[2].

Reference may also be made to a story where Manu is said to have compensated a son by giving cattle when in distributing the family land amongst his sons one of them was deprived of his share. In the enunciations of objects of gift to a Brahmin, land is not mentioned but personal property is indicated as the only suitable object to offer as *Daskhina*[3].

In the Sutra period, however, Daskhina of a village for officiating in the marriage ceremony of a Rajanya was ordained[4].

Gift of land appears to have been the first form of land-transfer ; we see Apastamba also allows the acceptance of gifts including house or land even from an Ugra. Hiring of houses or land is looked upon with disfavour and the food offered by such people is forbidden[5].

This feeling against land-transfer which is noticeable in the Vedic literature runs

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1 (See Satapatha Brahman, XIII 6, 2 18) also XIII, 3 7

2 Taittiriya Sanhita, III, 1-9-4

3 See Atharva Veda IX-5 4 ; Satapatha Brahman IV-3-4-7 ,

4 See Cambridge History of India Vol 1 P, 281

5 Apastamba Dh S 1, 6, 18

on through the Buddhistic and post Buddhistic period, though it gradually lost all keenness During this period, evidence is not available to show whether a village *Khestra* (cultivable land) was capable of being transferred though instances of transfer of jungle-land and forest-lands occur[1]

The king claimed only a tithe of the produce of the land[2] as in the Vedic age and he could make over the tithe as a gift as in the old Vedic days for not yet was he recognised as the owner of the land[3], the king could also remit this tithe[4], by such grants the peasantry were ousted from no one of their rights During this period the king was not entitled to create Zemindary interest in land, at least the evidence does not establish this position[5]

As in the Vedic period what the king transferred was only the *regalia* rather than the land the parallel from the history of Teutonic land tenure would clearly show this[6]

1 [illegible]
2 [illegible]
3 [illegible]
[illegible]
4 [illegible]
[illegible]
6 [illegible]
[illegible]

From the above discussion. I may be permitted to conclude that from the very beginning of the Aryan occupation of India the Aryans compelled by the sheer logic of fact were trained to regard land. which was the basis of their state-organisation. from the stand-point of public law in addition to looking at it from the point of view of private law. This idea. if it were kept in view by the writers on the evolution of land-tenure in India would have saved much confusion of thought and spared the student much bad speculation on the relative position of the king and the subject as regards the extent of their rights over the land in the period prior to the Renaissance of the 4th century A. D. I am led to believe that with this torch to guide us, many a dark corner in the history of ancient Indian land-tenure will be illuminated and we shall surely be able to trace the straight path of the evolution of land-rights in India. Sanskrit literature of this period also emphasised the position of the king as merely the receiver of the land-tax and does not enunciate the theory of royal ownership of land[1] , the text of Manu[2]

1 See the matter discussed in Vol XXIII Calcutta Law Journal, short notes P 1 etc

2 Ch 3 Sl 39

which furnishes Buhler with a peg where on to hang his theory may not stand critical examination Moreover, the text or at-least that particular portion thereof which deals with the king's relation to the land might have found a place in the Smriti in a later redaction accomplished in the age of the Brahminical Renaissance

It is clear, therefore, that till the third century A. D the theory was that the people owned the land and the king levied a tax realised usually in the shape of a fixed part (which, however is given differently in different authorites) of the produce of the soil. The produce of mines was not an exception from the general rule as I have shown before, since the theory of the Hindu Jurist did not make any distinction between the surface and the underground and the ownership of the people included the underground also

CHAPTER VIII.

The Great Hindu Revival of the 4th Century and its effect on the theory of the ownership of Land and Minerals.

I have already noticed Vedic texts and texts from the Buddhistic literature showing the traditional and obstinate feeling of the people against the transfer of ownership of land and the necessarily limited conception of such ownership in those days

Instances of gift of land are noticed in the early Vedic literature on rare occasions and to specified persons such as the officiating priest in a sacrifice. In the age of the Sanhitas, *Dan* or gift has been inculcated as one of the primary duties of the three higher castes in the community. In every one of the Sanhitas we notice passages which enjoin gift. For instance, Vasistha says[1] :—

यट् कर्म्माणि ब्राह्मणस्याध्ययनमध्यापनं यजन याजनं
दानं प्रतिग्रहश्चेति । त्रीणि राजनस्याध्ययन यजनं
दानं शास्त्रेन च प्रजापालनं स्वधर्मस्तेनजीवेत् । एतानि
एव त्रीणि वैश्यस्य कृषिवाणिज्यपशुपाल्यकुसीदञ्च ।

Gift, therefore, is a meritorious act according to the sages of Hindu Law. Gift

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1 (Vasistha Sanhita, 2nd Chapter)

of land was an act which the sages regarded as specially meritorious Numerous passages occur in Sanskrit literature describing the merit of the donation of land, Brihaspati says[1] —

सुवर्णदानं गोदानं भूमिदानञ्च वासव ।
एतत् प्रयच्छमानस्तु सर्वपापैः प्रमुच्यते ॥
सुवर्णं रजतं वस्त्रं मणिरत्नञ्च वासव ।
सर्वमेव भवेद्दत्तं वसुधां यः प्रयच्छति ॥

Sale of land was specially abhorred and a text of Gautama forbids it The sloka runs as follows —भूमिम्रौषि यथाभाव्य[2]। In fact, we do not meet with any instance of sale until we come down to the later Buddhistic age, free alienation of immovable property was not favoured by the Hindu system in its earlier stages, as a matter of fact, all ancient systems of jurisprudence betray a characteristic disfavour of free alienation, but in all ancient systems, the old restraints on alienation were gradually relaxed in order to meet the demands of an advancing community undergoing social and economic changes

Under the Hindu system of jurisprudence, as I have shown above, the first move was made towards an act of gift which being considered a religious duty was placed

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1 (Brihaspati Sanhita slokas 4 5
2 Chapter ~ Gautama Sanhita

outside the scope of the general restraint on alienation of immoveable property. Then, when under the growing exigencies of a progressive community, a sale of land began to be tolerated, it was not originally regarded as absolutely free from stain and we find that a sale of land was made to resemble as far as possible an act of free gift[1]

But as the ages rolled on this feeling became less and less acute and in the later Buddhistic period there is some record of transfer of land by private owners

Apastamba, for instance, says that land might be let against a half or other share of the produce[2], this method seems to indicate the first tentative inroad upon the traditional feeling of the nation against the transfer of land as an ordinary business transaction Jatakas give three instances of sale of land[3]

The Artha-Shastra sanctions the lease of land. It seems, therefore, that in course of time the conception of ownership of land was undergoing a change until towards the end of the Buddhistic age we find that land almost became a usual object of juristic transactions like gift, sale and lease

1 See Mitakshara quoted by Dr P N Sen, Hindu Jurisprudence P 75

2 Ap II—11 and 28

3 See Rhys Davids Buddhist India P 47

It appears therefore, that by the end of the Buddhistic period the people's conception of the ownership of land did not prevent its free and full disposition and literature and inscriptions alike bear out the position Inscriptions record the gift of land by public and private individuals and all sorts of people are found making gifts of land and other things to stupas[1]

But it is remarkable that except in the case of a single inscription in Southern India, the period 200 B C to 300 A. D is singularly devoid of any record of any gift of land or of any other article to a Brahman or to a Debata of the Hindu pantheon[2]

This period might be fitly described as the period of the foreign rule in India, which shows a great decadence of the Vedic faith and the influence of the Brahmins and the followers of the Vedic cult, Buddhism of the early form was the prevalent religion, along with Buddhism we notice the prevalence of various un Vedic forms of worship[3]

Buddhist literature is full of passages which indicate the social inferiority of the Brahmans Kshatriyas occupied the

1 Bhandarkar's P ep into the Early History of India.

2 See Sir R. Bhandarkar's Vaishnavism pp 42 43

3 See Ch 3 of Chanda's Indo-Aryans.

superior social rank and Brahmans came next in order , caste in the sense of later Hinduism was absent and a poor Vessa could become a Kshatriya or a Brahmin ; and there was no degradation attached to following any trade or occupation whatsoever ; Brahmans are frequently mentioned as engaged in agriculture and also as cow-herds and goat-herds There was freer possibility of change in the social ranks without loss of caste and record is found of Kshatriya princes who adopted the occupation of a potter, a basket maker, a florist, a cook, a trader, and a labourer without loss of any social prestige or caste[1].

The language of the inscriptions also pay a scant regard to Sanskrit, the sacred language of the Brahmins and various forms of *Parkit* are employed for official purposes and for recording official or private transactions as the inscriptions and plates amply testify[2].

The dynasties and clans that held sway in the middle and outer countries of Northern India according to the Brahmans and Upanishads continued to exercise power down to a century after Buddha. Pali texts give a list of sixteen powers of

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2 Ch IV, Buddhist India by Rhys Davids

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Northern India in Buddha's time which shows that these powers are the self-same ancient Rajas mentioned in the Brahmans and Upanishads Puranas also bear witness to the same condition of things[1]

Magadha became a great power under Mahapadma Nanda Pargiter quotes —

"A son of Mahanandin by Sudra woman will be born a king, Mahapadma (Nanda) who will exterminate all Kshatriyas Thereafter kings will be of Sudra origin Mahapadma will be sole monarch, bringing all under his sole sway He will be 88 years on earth He will uproot all Kshatriyas, being urged on by prospective fortune[2]

Though not always absolutely correct, the Puranic list of the kings is mainly so and the story of Mahapadma (Nanda) and his conquest of Magadha are real historic facts of great importance The invasion of Alexander roused in the Indian people a stubborn spirit of resistance and many tribes and chiefs and kings offered deadly battle before they submitted to the king of Macedon it is recorded that Alexander, while far away in the Punjab, heard reports of an immense military preparation made

1 See Chanda's Indo-Aryan pp 51-65 and Pargiter's Purana Text of the Kali Age I 69

2 See Purana Text, p 69

by the king of Magadha to resist him. The story of the rise of the great Maurya family of rulers also clearly indicates a change in the old order of things. Where were the representatives of the older dynasties then? It seems certain, therefore, that they were overthrown by Nanda-Mahapadma, a low-born conqueror from semi-barbarous Magadha This conquest of Vedic Aryandom by Magadha spelt an utter disintegration of Vedic Aryandom and its principal upholders-the Brahmans and Kshatriyas, this disintegration which had already commenced some centuries before this time in consequence of the teachings of Buddha and Mahabira was completed by the fall of the older Kshatriya dynasties and by the rise of the heretic Magadha Empire

There was practically no Hindu King in all this period covering 600 years of the history of India who attained a paramount power except for a time when the Sungas reigned but their influence was very short-lived and did not last long enough to raise the position of Vedic religion and its followers in the country where Buddhism reigned supreme

But from the beginning of the 4th centry A. D. the whole scene changes and with the advent of the Guptas in the political

firmament of India, may be dated the renaissance of the Vedic cult in its present form which led to changes of a remarkable and permanent character in social, political and legal spheres[1]

Brahminism became again the state-religion and powerful grew the influence of the priesthood the Brahmans once again become the highest caste in the land and the Kshatriyas occupied the second place This is due to a subtle understanding between the Kingly caste and the priestly caste, having an eye not only to their mutual advantage in the world but also to the true good of the Indian society as a whole[2] We find inscriptions in large numbers which record the gifts of land by the King to the Brahmin , gifts of villages also are seen The Deities of the Hindu Pantheon elaborated by the genious of the Brahmins of this period got a fitting recognition in the hands of the Kings who sometimes describe themselves in all pride as Parama Bhagbata in their coins and make profuse gifts of land for the worship of the deities and for the creation and up-keep of their temples[3] It is also to this period that

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1 (See Bhandarkar's Peep I to the Early History of India, generally ; also pp. 121 and 171 of Chanda's Indo-Aryans.)

2 Mahabharata Santi, ch 71 * and 72 also Vana 90th Ch.

3 Smith Oxford History p 157 etc.

we must assign the origin of the rigid rules of the Smritis on all social and religious matters which certainly were redacted and re-written in the mellifluous *Anustupa* to facilitate the introduction of the novelties which were born out of the political and social necessities of the period; the ancient rituals like the Aswamedha were revived and Prakit language gave place to Sanskrit as the state and literary vehicle of thought[1].

A slight glance into the Smritis would clearly indicate the nature of the social and political changes introduced by the Brahmins with the help of the Kshatriyas or Kings who may be said to have coalesced with the minister- class (Priests) for the permanence of their temporal superiority yielding to the Brahmin the guidance in all social, religious, legal and even administrative matters as in the Vedic period

It was during this period of vigorous Brahmin revival that I think the change took place which made the King the owner of the land and the subsequent history of Hindu India is replete with records which shew that the King was the *Dominus* in regard to land and it was in his absolute power to give or perhaps take it way. I

[1] [illegible]

shall now try to establish this position from a study of such materials bearing on this topic as are available to me

The position seems to be well established that from the earliest times the soil in India belonged to the cultivator who cleared and tilled it subject to the payment of a tax to the ruling authority, whatever may be the designation of such authority Even the Smritis edited during the period of Brahminical renaissance have not been able to wipe out all traces of the pre-existing rule of law on this subject, for Manu has a sloka which signifies that the soil belonged to the cultivator[1]

The Vedic texts and the subsequent literature prior to this period support the above view[2]

Though over lordship or the right to the superiority lawfully belonged to the King all through the history of India up to the end of the Buddhistic period and the period of the foreign rule (up to the end of 3rd Century A D), yet scholars claim to have traced the germ of the subsequent theory of the royal ownership

1 Vide Manu Ch. 9—Sl 44

2 (See generally the 1st. Chapter of S C. Mitra's Land laws of Bengal and Mr Radharaman Mukherji's article in 23 C L J Short notes—Generally)

of the soil even in the Vedic literature; the discussion has turned upon the word *Gram-Kami*[1], which evidently means the practice of the Kings' granting away to their favourites the royal prerogative of realising revenue from the village, I think the gift of the fiscal prerogative of the Crown is meant and there is no indication that the soil was given away or even in any way affected by the transaction; the village obtained a new overlord in the place of the King. The view has also been maintained that the term *Gram-Kami* suggests that the King was the owner of the soil of the village and the grantees obtained the ownership of the village But the view which is consistent with the pre-existing state of the idea on this subject seems to be that in such instances the regalia alone was transferred.

It is true that no definite conclusion can be reasonably based on this word as to the nature of the relation of the King to the land in the Vedic world, but although the King was only entitled to levy his legitimate *Bali* (tax), yet the King with the consent of the clan could appropriate land[2]. This right, which was originally seldom

1 See Macdonell and Keith's Vedic Index Vol I p 245

2 Satapatha Brahman VII 1-1-8

exercised and then with the consent of the nation, might, in course of time with the growth of power of the sovereign, have become absolute, leading to the notion of soil ownership by the sovereign[1] But no trace of the assertion of such a right is visible except in Kautilya whose doctrine was considered by me already

But later on the idea that the king was the absolute owner of the land became an accepted principle of Hindu jurisprudence

We do not find any text in Sanskrit literature which enunciates this principle at any time before the great Brahmanical Renaissance of the 4th century A D except in Kautilya s Artha Shastra , contemporary Buddhist literature shows that this theory of Kautilya was not accepted as a practical or working hypothesis in the country As suming that Kautilya in truth propounded the theory of the ownership of the soil by the king, it may be naturally asked, why was not the theory of royal ownership of land accepted in the third century B C though the same theory became an accepted creed in the days of the Brahmanical revival of the third or fourth century A D ? As one of the reasons for the non acceptance of the theory started by a Brahmin of the outer

1 Baden Powell Indian Village Community P 207

countries may be suggested the fundamental difference in the culture of the Midlandtic pure Vedic Brahmins and the Brahmins of the outer-country[1] and the consequent indifference of the Brahmans as a body.

Even the over-shadowing influence of the two great Mauryas Chandra Gupta and Asoka could not obliterate this cultural difference ; we do not know what might have been the result if the Mauryas remained staunch adherent of the Vedic cult instead of adopting the heretical Jaina or the Buddhist faith and if the on-rush of foreign invasion continued to press on the culture of Aryan India for a sufficiently long period ; it may be suggested that the unification of the two distinct types of Aryan culture represented by the Mid-landic Brahmins and Outlandic Brahmins would then have produced a new Brahminic culture and the Brahmin renaissance of the 4th century A. D might have commenced from the beginning of 300 B C , when this cultural unification took place during the ascendancy of the Guptas we find a remarkable re-adjustment which involved the acceptance of and harmonisation with many of the social, religious and political theories which had their origin, not only

1See Chanda's Indo-Aryans Ch 3.

amongst the Out-landic Brahmins but even amongst the real non-Aryan peoples of India The conclusion, therefore, to which one might be led, seems to be that the acceptance of the theory of Kautilya on the subject of mines and of ownership of land as a practical doctrine of the political administration may be dated from the ascendancy of the Guptas, the doctrines then adopted continued to supply practical rules all through the subsequent history of India even when the political sovereignty of Hindustan passed successively into the hands of the Mahomedans and the British

The story of the re-birth of Indo-Aryan culture in the form which is embodied in the Smritis and Purans and the Sanskrit literature in general dating from about the 4th century A D is a fascinating topic for the student of Indo Aryan history, but my present purpose is a very limited one and I shall only take up this interesting topic for illustrating the view which I enunciate on the theoretical change regarding the question of the owner ship of land including mines in the term land

The most noticeable feature of this period is the spirit of amity which marks the relation of the Brahmin with the Kshatriyas or Rajanya sect and a well con

sidered and determined policy to entrust the legislative and judicial functions of the government to the Brahmins and the supreme executive to the king. It was in this way that the dispute as to the respective superiority of the Brahmin and the Kshatriya was settled and an analysis of the position and the privileges of the Brahmin as well as those of the Rajanya caste will not fail to impress on our mind the purely political character of this great compromise which drew together, amalgamated, assimilated and harmonised the divergent races, and cultures, political, social, and religious systems, under the great banner of nominally Vedic civilisation with the object of building up a great Indian nation professing the faith of the Vedas which would stand as a bulwork of strength against foreign invasions which for the past six centuries had disintegrated the *Sakti* (power) of India, leaving her an easy prey to attacks of hordes of foreign clans The only conclusion from the reading of the Smritis cannot be anything but this I will refer to the texts of the Rissis to show the relation of the Brahmin with the Kshatriya But before taking up the ideals of the Brahmanic Renaissance let us have a hurried

the Vedas by the promulgation of un Vedic religions like Jainism and Buddhism Even before the rise of these historic conduct-religions, there is evidence in the legends of fights, between the representatives of the Orthodox Vedic path and the Kshatriyas with their comparative freedom of mind, about the religion of external observances[1] But before this revulsion of faith actually took place, the Brahmans during countless centuries were the most important class in the social organisation

This position of the Brahmans in the hierarchy of castes is manifest even in the legends which seek to account for the fourfold division of the Aryan people in India[2]

But, post-Vedic Brahmanism retained a vivid memory of the bitter struggle for supremacy between the Brahman and the Kshatriya as might be inferred from the story of Parasu-Rama to be found in the Mahabharata and the Puranas[3]

But after the period of the struggle for supremacy, a closer study of the Vedic and post-Vedic literature shows the Brahmans

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1 Dr Rabindra Nath in the Viswa Bharati Quarterly for Oct. 1923

2 Rig Veda X 90 11 12 Taittiriya Sanhita VII 1 1 4 6

3 Vedic Index—Rerozin, p 2 8. see also Mahabharata, Santi XLIX Aswamed—XXXIX Anu.—CLII Santi LXXIX. G 11 Harivan s V

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The Brahman was believed to possess the power to help the King by the performance of necessary sacrifices and spells ; it was the sacrifice of the priest that averted draughts by causing timely rains, it was sacrifice that ensured victory to the King, it was sacrifice again which brought plentiful harvest and introduced harmony between the King and his subjects, the Brahmin's was the monopoly of sacrificial lore. Besides rendering sacrificial and religious services to the King and the people in general, the Brahman of the Vedic Age, rendered immense social service as educators of the people and ministers of the sovereign. This highly learned and pious aristocracy of intellect and knowledge was independent of the King and exempt from the ordinary scope of the King's power

1 See Acharyya's Codification in British India page 15.

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This position of the Brahmans in the hierarchy of castes is manifest even in the legends which seek to account for the fourfold division of the Aryan people in India[2]

But, post Vedic Brahmanism retained a vivid memory of the bitter struggle for supremacy between the Brahman and the Kshatriya as might be inferred from the story of Parasu Rama to be found in the Mahabharata and the Puranas[3]

But after the period of the struggle for supremacy a closer study of the Vedic and post Vedic literature shows the Brahmans

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1 Dr Rabindra Nath in the Viswa Bharati Quarterly for Oct. 1923

2 Rig Veda X 90 11 12 Taittiriya Sanhita VII 1 1 4 f

3 Vedic Index—Reg 2in p 2 8 see also Mahabharata Santi XLIX A wamed—XXXIX Anu—CI II Santi LXXIX 13 ff Hariban s V

to be unquestionably in the ascendant in the Aryandom ; as law-makers, as ministers, as teachers, as priests, and even as the arbiters of the life to come, their influence made history in India for the Aryans and pre-Aryans alike till the advent of the heretic cults of Jainism and Buddhism and the rise of the Magadha Empire[1]. Let us now refer to some details in illustration of the picture I have pourtrayed above.

The Brahman was believed to possess the power to help the King by the performance of necessary sacrifices and spells, it was the sacrifice of the priest that averted draughts by causing timely rains, it was sacrifice that ensured victory to the King, it was sacrifice again which brought plentiful harvest and introduced harmony between the King and his subjects, the Brahmin's was the monopoly of sacrificial lore. Besides rendering sacrificial and religious services to the King and the people in general, the Brahman of the Vedic Age, rendered immense social service as educators of the people and ministers of the sovereign. This highly learned and pious aristocracy of intellect and knowledge was independent of the King and exempt from the ordinary scope of the King's power

1 See Acharyya's Codification in British India page 15

Besides, there were other priviledges enjoyed by the priestly class in the Vedic age

The King should support a Brahman against a non-Brahman in a litigation and should never oppose him[1] offences against a Brahman were punished more severely and the fines levied were paid to the Brahmin the King was not allowed to tax a learned Brahmin and was enjoined to make gifts of land and money to a Brahmin and if a man died in attempting to recover a Brahmin s property, he secured the merit of a sacrifice[3]

The privileges of the king were more or less an outcome of his duties He had the right to levy taxes and tributes from the *Vis* and to distribute treasures raised either by taxation or plunder amongst his people and especially amongst the priests He had the right of passing judgments in Civil and Criminal cases and of appointing state officials. Perhaps, he had private property in lands and cattle—but I think the policy of Vedic constitutional law did not permit the King to have private property in any shape The king was the supreme authority for declaring war and peace but it seems he was constitutionally

1 Tai Sanhita II 5 11
2 Tait II 6. 11.
3 Apastamba II 2 1 2 10

bound to consult his *Purohit* and officials and the assembly. The king was in fact the *Vispati* and had no power over the priest Divine right was never claimed by him nor acquiesced in by the priests or the Vis[1]

The priestly oligarchy of the Vedic period with its enormous privileges was a source of endless trouble in the Sutra period. Sacrifice became a costly affair and its details increased and there was often much dispute amongst the members of the priestly class themselves as to their details and also as to the division of the *daskhina* and other sacrificial offerings. This was a source of weakness which inflamed the desire of the king to curtail the exorbitant privileges of the priest-hood just before the beginning of the Buddhistic period About the same time successive socio-religious movements arose in India (chief of which were the Jainism and Buddhism) with the great object of reforming the social and religious life of Aryan India ; these great movements were headed by members of the Khastriya Class. Sacrifice involving huge slaughter of animal life became a special point of attack and the people were enjoined to give up

1 See Dr S Shastry's Evolution of Indian Polity, Lect 5

the social and religious customs enforced by the Brahmans and to conquer the internal enemies of the self by resorting to strict self discipline Then arose atheistic schools of philosophy and systems of religion in which the Gods of the Vedic Brahmans had no place at all The Vedas were rejected and sanctity of animal life was strictly enjoined

The truly abject state of the once-powerful Brahmin oligarchy has been thus summarised by Dr S Sastri[1]

"While under this severe criticism directed by the Jainas and the Buddists against the social, religious and political views of the Brahmin oligarchy, the firm hold which it had on the people s mind was fast loosening, the constructive organisation made by the separatists to reform the Aryan society in all its aspects appeared to render that old oligarchy quite powerless to survive

The kingdom of Righteousness which began with Sakya-Muni took a strong hold in the country and for six centuries to come since the days of Asoka the Great, the Brahmin Oligarchy with its Vedas, its Vedic Gods its animal sacrifices ceased to play any important part in the sphere

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1 See Evolution of Indian Polity—P 10 —

of Indian social, religious and political life ; for in this Kingdom of Righteousness the Brahman had no function to perform and many had to forget the Vedas and forsake their old Gods and become Jaina or Buddhist ascetics Some, however, retained their old religious and social practices and it was this band of sturdy irreconcilables who ushered in the birth of Brahmanical renaissance in or about the end of 3rd century A. D. I had already noticed the amity between the Brahman and the Kshatriya during the end of the period. It is on a studied co-operation between the Kshatriya with the Brahman that the new scheme rested The whole policy of this *rapproachment* between the Brahman and tho Kshatriya can be gathered from a sloka of Manu which runs as follows[1].—

नाब्रह्म क्षत्रमृध्नोति नाक्षत्र ब्रह्म वर्द्धते ।
ब्रह्म क्षत्रञ्च सम्पृक्तमिह चामुत्र वर्द्धते ॥

The above sloka signifies that a Kshatriya without the Brahmin cannot prosper, neither does a Brahmin without the Kshatriya prosper , but if the Kshatriya and the Brahmin act in unison, they both prosper in this world as well as in the next.

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1 Manu 9—322

This pact between the intellect and prowess of India made in the fourth century of the Christian Era was an event of far reaching influence in the history of universal culture as it has rescued the special culture of Brahmin India from threatened destruction during the period of foreign supremacy and the spread of rampant Buddhism

The whole Smriti and later Sanhita literature as well as the Epics and the Puranas betray abundant evidence of this coalition or rather partnership[1] In fact the administrative and social machinery has been reorganised on the basic idea of a carefully thought-out union between the Brahman and the Kshatriya

Gautama's Sanhita contains the following Sloka which echoes the sense of the sloka quoted above from Manu —

ब्रह्मपूतं हि क्षत्रमृध्यति न व्यथते[2] ।

In the scheme of the great revival of the fourth century A D *Debatas*, ancient and improvised play an important part, for the new scheme assumed the form of a theocracy of a peculiar character In one sense the Brahmin the Kshatriya and the Debatas occupy position of co-ordinate

1 See Mahabharata Santi lxxiv * lxiii 20 21 lxxiv

2 Gautama Ch II

importance in the body corporate of the State in the theory of the Neo-Brahmanism of the 4th century A D

Therefore, Parasara says —

सर्व्वदेवमयी विप्रा न तद्वचनमन्यथा[1] ।

Manu describes the king as

महती देवताह्येषा नररूपेन संस्थिता[2] ।

The worship of the Debatas has also been a cardinal creed of this new combination—a position for which no authorities need be cited.

Texts also indicate an earnest desire on the part of the engineers of this "triple alliance" to solve the problem of the wherewithal to maintain their new scheme. Parasara says :—

राज्ञे दत्ता तु षड्भागं देवानान्चैक विंशकम् ।
विप्राणां त्रिंशकं भाग कृषिकर्त्ता च लिप्यते[3] ॥

This sloka of Parasara significantly points out the scheme as well as the ways and means for the up-keep of the new theocracy which was ushered in by the Brahman genius of the 4th century A D The king was to receive a sixth, the Debatas one twenty-first portion and the Brahman a thirtieth part of the agricultural produce. This has been enjoined

1 Parasara 6—61

2 Manu, 7 Ch 14

3 Parasara 2nd chapter 14th Sloka

as a duty of the cultivator by the legislator for the Kaliyuga, for it is on a schedule of *duties* of the constituent members of the society that the Brahman placed his new scheme for the regeneration of his country It is to be noticed that the sixth part of the produce which was payable to the king as tax has been placed on the same footing as the parts payable to the Debatas and Brahmans, this circumstance indicates that the portions payable to the Brahmans and the Debatas are so for the up keep of the State and the duty of the subject in respect of all these three taxes is of the same obligatory character This may remind us of the first written utterance of the Anglo-Saxon law

In Western countries Jurisprudence and politics always insisted on the *rights* of the members of the community and con sequently, in those countries, the structure of law, religion and government had been raised on a carefully thought out scheme of rights. In India on the other hand, in significant contrast with the West the fabric of social political, legal and religi ous life of the community has been built up on an anxiously worked out scheme of duties In fact the theory of *Varnasrama Dharma* furnishes the real clue to the ad

justment made during this period. This difference in the underlying principle chalked out different courses of the Evolution of life in India and Europe.

Debatas are placed at the head of this new politico-social organisation and their worship has been inculcated as the primary duty of every member of the community, forms of worship had been improvised to suit the intellectual capacity and the stage of civilisation of the various classes of the community, since this Neo-Brahmanism was in essence a proselytising movement of a deep significance which attempted a synthetic co-ordination of all races and creeds in Hindustan, which did not forsake any race or creed but embraced all within its pale.

Next came the Brahman and the other constituent classes of the community were placed below him, for Vasistha says[1] —

त्रयोवर्णा ब्राह्मणस्य वशे वर्त्तेरन् तेषां ब्राह्मणोधर्म्मं
यद्ब्रूयात् तत् राजा चानुतिष्ठेत।

Apastamba reiterates the same idea more clearly and points out the method to be adopted; he says

" If any persons transgress the order of their spiritual director, he shall take them before the king. The king shall consult

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1 Vasistha Sanhita, 1st chapter

his domestic priest, who should be learned in the law and in the art of governing He shall order them to perform the proper penance, if they are Brahmans and reduce them to reason by forcible means, except corporal punishment and servitude, but men of other castes the king, after examining their actions, may punish even by death[1]"

After the Brahman is placed the Raja, for Gautama ordains[2] —

राजा सर्वस्येष्टे ब्राह्मणवर्जं

From the above we may at once gather the motive, the scheme and method of re adjustment effected in India of the 4th, century A D by the far sighted partnership between the Brahman and the Kshatriya, for Gautama says [illegible] (8th chapter) here I shall only state the results of the compact between the Brahmin and the Rajanya with special reference to the subject in hand

The history of king ship in India till now did never show any attempt to base the royal office on divine right, but now we find that the theory of the divine right of kings as well as the sacredness of royal persons were adopted by the Brahmins Manu says —

1 Apah mba II v 10 13

2 Gautama 4th chapter

Brahmans and replaced the old Kshatriya kings of Buddhist faith[1]

This sudden change of the theoretic basis of the royal right is a masterly stroke of Brahman genius to conceal the non-Aryan origin of several powerful tribes and secure powerful allies against the enemies of the Brahman faith like the old Kings of the ancient Kshatriya class who generally followed the heretical faiths

The duties of the king thus installed on the divine basis form a long chapter in the literature of the Smritis and in addition to the ordinary duties appertaining to the office in all countries, the Brahman politician places special insistence on his duty to study the Vedas and shape his conduct according to Vedic injunctions under the advice of the Brahmans and to make gifts to Brahmins and uphold the law of castes or *Varnasrama Dharma*[2]

The politicians and the legislators spared no pains to raise the rights and privileges of such a king, Manu says —

"The king obtains one-half of ancient hoards and metals in the grounds by reason

1 See Manu, X 44 and contrast what Patanjali says as to some of these people

2 See Manu VII—53, VII—78 79 VII—37 83, 79 82 86 89 134, 145; VIII—395 IX—313—323; XI—21—23; VII—203 VIII—41—42 46

of protection, because he is lord of the soil[1]." (see however, my explanations, if one still thinks that this Sloka was in existence in the original Manu Sanhita)

The ownership of the kingdom has been ascribed to the king in the following Slokas of Brihaspati—

"Formerly this earth (belonged) to Yadu Dilipa, Nahusa and other kings; and in future it will go to others[2]—

"This earth was given away by many kings, Sagara and others But the fruit belongs to him in whose possession the land exists"—Brihaspati[3]

Brihaspati says that the king inherits the property left by a person without heir because he is "owner of all[4]"; and land formed by alluvion becomes the property of the person who obtains the same from the King; the Slokas run as follows:—

16. Supposing a piece of land to have been taken from a village belonging to one man and given to to another man, either by a large river or *by the king*, what should be decided in that case?

17. The land abandoned by a river or granted by the king belongs to him who

1 Manu, VIII, 89

2 Brihatpati Sanhita Sl 25.

3 Sanhita Sl 26.

4 See, Brihaspati Smriti, ch. 25 slo 67

receives it Otherwise, there would be no acquisition through fate or the king among men

18 Loss and gain and life among men depend on the act of fate and of the king, therefore, in all affairs, what is effected by them must not be rescinded —

Narada also ordains some rules which evidently proceed on the assumption of the state-ownership of lands The sage proclaims —

'As pure and impure waters become alike on their junction in the ocean, even so (all) property acquired by a king (becomes pure in his hands)'[1]

'As gold on being thrown into blazing fire acquires purity even so all gains become pure in the hands of kings'[2]

A field which has been held by three generations in succession and a house which has been inherited from an ancestor, cannot be estranged from its legitimate owner by force of possession except when the king wills it so'[3]

Vasistha says as follows —

[illegible]
[illegible]
[illegible][4]

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1 Narada Ch 18 lo 4
2 Narada ch 18 lo 45
3 Narada ch XI lo 27
4 Vasistha Samhita—16th Chapter

The texts quoted above can only be rationalised on the view that the law-givers to whose slokas I have referred above uphold the doctrine of the ownership of the State, not only of land, but of every thing else belonging to the subject with certain specified exceptions

The principle of State-ownership of land thus set forth in the Smritis finds an explicit enunciation in the *Bhatta School* of the later Mimansakas[1].

Anath-Deva in the first Didhiti of his Raja-Dharma Kaustuva says:—"In the Sribhagabata the king is said to acquire the ownership of land of all kinds (*Sarva-prakarbhumi-Swamya*) only in virtue of his setting up idols of Gods;" (see the full passage extracted in Dr. Sham Shastry's Evolution of Indian Polity pages XI-XIII)

The history of Kasmir as narrated in the pages of Kalhan's Raj-Tarangini amply supports this theoretical basis of Kingship as enunciated by the later Mimansakas; for upon reading the work, even a careless reader would not fail to notice that every one, who ascends the throne either by conquest or by succession or by the nomination or tacit assent of the people, celebrates the event by the erection of temples for the

1 See S Shastry, Evolution of Indian Polity, Intro P XI, XII

worship of some Deity of the Hindu Pantheon and makes suitable gift of land for the up keep of the worship of the Deity, a reader might also notice that gifts of whole villages to Brahmins became a regular incident in the lives of the sovereigns of the country[1] I have not noticed in Kalhan s work any definite enunciation of the principle of the later Mimansakas, yet the facts narrated by Kalhan are only explainable on the supposition that the king acquires the ownership of lands simply because he sets up images of Gods in temples erected by him Instances also occur where the king dedicated the whole kingdom to his Deity

It is evident, therefore, that since the adoption of the doctrine of theocratic sovereignty ushered in by the Brahmins of the great renaissance of the 4th Century A D the practical adoption of the doctrine of State-ownership of land was an accomplished fact and history as evidenced by inscriptions and plates and erection of temples all over India amply testifies to this event. The actual division of the produce of the land in the Hindu kingdom of Vijayanagara clearly shows that Hindu sovereigns adopted the principle of Theocratic sovereignty

1 See also Raghubansa, canto I sl 44

and divided the produce of land according to the principle promulgated by Parasara.[1]

The point to establish which I have been labouring is proved beyond doubt and I think we are justified in rejecting the current views on the question of the ownership of land—

(i) the King has been the owner of the land ever since the earliest epoch of history in India as is held by Hopkins, V. Smith, Mill and other European Scholars; (ii) the people have been the owner of the land since the beginning of time in India as is held by another School of writers including some notable Indian authors; (iii) the King and the people have been joint owners as Elphinstone held The theory which fits in with history is that till the Brahminical renaissance with its new type of monarchy. the State was simply the over-lord and protector of land and was entitled to receive revenue not as owner of land but merely as the protector thereof, but, since then, the theory of the State-ownership of the soil was adopted and the land-tax levied by the King represented the share of the produce due to the King as the ultimate owner of the land. The practical adoption of this principle is manifest in

1 See P 38 of T L L for 1875

the law which allowed an ever-increasing share of the produce of land and mines to the king and as the Dravidians of Southern India and other purely non-Aryan Kings were more familiar than the Kings of Northern India with mines and their produce, the actual exploitation of mines began to play a much more important part in the new political life brought about by the Brahmins, in the Gupta empire, mines became State property and the kings exploited the mineral wealth of the country,[1] the Raj-Dharma Chapters of the works on political science do not also fail to indicate this change in the relationship of the Kings to the mineral wealth of the country

I have already drawn the readers attention to the ancient right of the King to realise 2 p c of the produce of mines as revenue The above rule continued to be the practical basis of royal revenue from the mines till the great renaissance of Brahminism in the post Buddhistic period

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1 Ragho Vansa Canto XVII—Slo 66

CHAPTER. IX.

Theocratic Sovereignty and the New Rule of Mineral rights.

Now I shall try to trace the effect of the adoption of theocratic sovereignty in Indian political Science upon the king's relation to the mines and mineral wealth of the country.

Of the Artha-Shastras of this period two are most famous-viz. the Sukra-Niti and the Kamandakiya Niti-sara and authorities are of opinion that these works were composed at about the same time when the metrical Smiritis were composed or re-written by the genius of Brahmin Political-Philosophers to harmonise with the theory of sovereignty advocated by them. The Smritis, like those of Manu and Vrihaspati and other legislators, though they advocated this new theory of sovereignty, did not, as I have shown, draw the full consequence of the application of their doctrine upon the various spheres within the jurisdiction of the king except by implication, for instance, they did not specifically lay down the theory of the State-ownership of land and mines, and the passages from Manu, Vishnu

and other Smriti legislators are ambiguous and I have shown how they are capable of bearing an interpretation consistent with the popular ownership of mines and lands on the older theory of the king's limited right to realise a revenue from lands and mines which might, however, vary under different circumstances mentioned by the older authorities themselves, but, these ambiguous slokes cease to be so if interpreted in the light of theocratic sovereignty, they might or, I am prepared to say, must have been introduced during this period of Revival

I have in a previous chapter of this work given reasons for the position that the mining rules of Kautilya bear evident proofs of later origin than the time when Kautilya is supposed to have lived If this be accepted as correct, there is ample ground for upholding the position that the boldness of the originator of the Kautilian School of Political Philosophy was maintained by his followers, it is quite likely therefore that it was the Kautilian School of the time of the Gupta Revival which clearly enunciated the propositions embodying the mining rules which are found in the extant treatise of the School In fact what was but tacit assumption in the works of Sukracharya and Kamandaka

appears as bold assertion of the royal ownership of land and mines in the school of Kautilya.

I have already drawn the attention of the reader to the passage cited from the Sribhagabat-puran to show how by the 5th or 6th century of the Christian era the political and historical writers in a body found their position secure enough to openly advocate that the State is the owner of all land in the country.

As in the case of land, the writers of the works on Political Science contemporaneous with the earlier Smritis like Manu, Vishnu and others were ambiguous on the question of the ownership of mines; but the actual rules embodied in these works show how the kings were trying to realise as revenue a greater and greater portion of the income of their subjects who had been working the mines. The verses I previously cited from the Sukra-Niti and the Kamandakiya Nitisara—are explainable on the assumption alike of the State-ownership of mines as well as on the principle of the ownership of mines in the people, though as I noticed before, the attempt was always to raise a higher revenue from the mineral-wealth of the country Like the ambiguous expressions in the Smritis as to the

ownership of the land, the political Science of the period did not speak in clear bold language on the theory of the royal ownership of mines which should have followed as a necessary logical consequence from the adoption of the theory of the State-ownership of the land. It is quite likely that by the time when the later Mimansakas expressly advocated the theory of the royal ownership of the land, the writers of a period later than that of Sukra and Kamandaka would boldly set forth the doctrine of the royal ownership of mines It is not improbable, therefore, that the rules found in the extant treatise of Kautilya on the mineral rights of the sovereign and the subject and also those advocating the State ownership of the soil in the territory composing the kingdom were actually adopted by the School of Kautilya after Sukracharya and Kamandaka composed their well known works on Political Philosophy

Extant historical works are singularly rare in the Sanskrit literature, though I am sure that the great literary activity of free Hindusthan could not possibly have left that branch of literature untouched , for, out of the ravages of the ruffian hand of barbarian invasions and out of the sea of dark

ness which succeeded the days of India's freedom when the soul of that great nation which produced intellectual works of very high eminence was in bondage, have emerged a few works of a truly historical character I have already drawn the reader's attention to the work of Kalhan Pandit entitled the Raj-Tarangini. The historian refers to several other works of a historical nature dealing with the history of Kashmir, of more voluminous dimensions, but unfortunately none of them have hitherto been discovered; but this fact need not make us lose heart for we may yet get hold of historical works of a strictly modern character, for, who could have guessed two decades ago the existence of the epoch-making work of Kautilya on the political science of the Ancient Indians? The recent discovery of the work, Ramcharitam by Sandhyakar Nandi affords further illustration of the view that the art of writing history was not unknown in India; besides, the daily increasing number of inscriptions and plates proves that the desire of having a lasting record of events for the enlightenment of future generations —the very desire which leads to the composition of historical works—was a very prominent impulse all over India. May

we not expect from Nepal and Thibet some ancient historical manuscripts? On this part of the subject, therefore, we have to content ourselves with such works as are now extant and I would, therefore, at once place before the reader such light as may be obtained from the Raj Tarangini

The following Slokas occur in the fourth Taranga of the work —

तस्मादेव् पार्थिमा तत् से मध्यधातुपुरं गिरि ।
महीमि हमविष्यामि कोमीपहतिकादिव ॥

इविदं इविदं दग्धा विमुच्यापिमयमप ।
इयामामाप्यसी नाग वर्ष मर्वाकरं गिरिम् ॥

भवन्त यव तथापि न वर्ष म्दर्यदर्शना ।
तामधातुरसम्भी इमत तद् गिरिमय ॥

रघुना धीविदं तभे मम एव म तां ददौ ।
यथामयुद मतूर्धि माप ताम्राकरं गिरि ॥

स तस्मात् कमराज्यात् ताम्रमाकष निर्ममे ।
शतं गौताम्राद्विनामितोर्भ नामिवाद्विह ॥

The King Jayapida of Kashmir about whom the above Slokas are recorded by the historian must have flourished in the early third quarter of the Eighth century for, between Lalitaditya and Jayapida about thirteen years intervened[1]

1 See Raj Tarangini 4th Taranga and Stein's Introduction p 89 to his Chronicle of the Kings of Kashmir and Journal Asiatique (18[illegible] p [illegible])

Therefore by the eighth century, the doctrine of the royal ownership of mines was an accepted creed in the Political Philosophy of Hindusthan and the Kings became absolute owners of mines; otherwise, King Jayapida could not have appropriated the produce of the copper mines of Cramarajya without any protest from the subjects of his country and the historian would not have recorded the circumstance as an ordinary event.

It may, however, be objected that the author of the Raj-Tarangini flourished in the 13th century and it is unreasonable to assert from the writing of an author of 13th century the existence of royal ownership of mines in the 8th or earlier centuries; but this objection, to my mind, is not of much force, since we have shown that the doctrine of the Royal ownership of mines was a necessary logical conclusion of the adoption of the new theory of theocratic monarchy and Kalhan Pandit himself states that he compiled his history of Kashmir from older authorities[1]

We may, therefore, unhesitatingly accept as a fact that from the eighth century the new theory of the right of the Crown to the land including mines had supplied

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1 See First Taranga—Slokas 8 to 24

the actual working law to Hindu Sovereigns and the people of Hindusthan submitted to the exploitation of mines by the Government either by its own agency or by leasing them to capitalists on the plan copied by the Kautilyan school from Greek sources

The application of this new theory of the ownership of mines is wide spread in the continent of India and all Indian sovereigns Hindus as well as Mahomedans appear to have adopted this principle in their fiscal administration I shall now turn my attention to the fiscal history of Indian Independent States to see the nature and extent of the application of this doctrine

In the first place, let me turn to the Rajput Country The Aravali and its subordinate hills are rich both in mineral and metalic products The mines are royal properties and the wealth derived therefrom enabled the Rajput principalities to struggle against the superior power of the Mahomedans These mines under the political system prevalent in Rajwara are royal property and their produce was a royal monopoly which increased the revenue of the sovereign [1]

1 Todd's Rajasthan P 13, 146 A C. Ukil's Edition

There is reason to suppose that the principle of the royal ownership of mines was adopted in Rajputana from the earliest times of Rajput existence ; as modern historical Scholarship would not place the origin of the Rajput States at an earlier date than the 4th century A.D., we may take it that the new principle of the Royal-ownership of mines found its practical expression in Rajputana, in the phrase "An-dan-Khan" (which summarised the Rajput Royal rights and meant allegiance, commercial duties and (ownership) mines) since the commencement of the Gupta Revival [1]

Mineral rights of the crown formed an important source of royal revenue and mines of tin which contained silver, iron. lead and copper abounded in many parts of Rajputana and in ancient times produced an enormous revenue which enabled Rajput feudalism to uphold the independence of Hindustan for some centuries, which afterwards in those days of foreign rule, time and oft, flickered into that sad effulgence and won the admiration of the world.[2]

Salt is regarded as a mineral in India and Kautilya counted it as such. The Salt lakes of Raj-putana are mines of wealth

1 Todd's Rajasthan P 13 of A C Ukil's Edition.

2 Todd's Rajsthan P 146 of A C Ukil's Edition

and their produce is exported over the greater part of Hindushtan. The marble quarries of Marwar produce marble which was used in the splendid edifices of Northern India from very early times down to the time of the Moghals. The Salt-lakes and marble quarries brought considerable revenue to the coffers of the State of Marwar.

There are iron mines which were of great use to the war like people of Rajputana and match locks, swords and other war-like implements were prepared out of raw iron ores.[1]

Rajputana, therefore, affords an apt illustration of the employment of the doctrine of Hindu Law of mines in actual life and shows that the doctrine of the royal ownership of mines continued to be in use all along in Rajput Independent States.

But though the Hindu and Mohammedan kingdoms in India adopted the doctrine which proceeded from the later theocratic principle of sovereignty in regard to mines and the kings were regarded as owners of both the surface and the sub soil, the question yet remains to be answered if by a grant of land made to him without specifically conveying the sub soil or reserving

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1 See Tod's Raj. I. 721 [illegible] 1919 1072—1073 A. C. [illegible] [illegible]

under-ground rights, the subject became entitled to the under-ground minerals also. Now, if the proposition which I have submitted on this topic be correct and therefore, if it be held that land included both the surface and the sub-soil, there is no theoretical impediment in the way of considering the subject as owner of the minerals below the surface under such a grant as I have mentioned before; further, the question also arises if a mine were discovered under the land of a subject in respect of which the Government revnue is paid by him, who should be entitled to it —the King or the subject? The Annals of Rajputna do not give any clear solution of the problem suggested above, it seems to me, however, that with regard to unappropriated land, the mines discovered thereunder must on the principle of theocratic sovereignty belong to the king while in regard to land already settled with and under the occupation of a subject, the theory of the legal conception of land which I have propounded before must be applied and the subject would become entitled to the mines under the land settled with him. That this system was in actual work in India for centuries admits of no doubt. There might be some objection on the score

of actual exploitation and appropriation of the mineral wealth of their territories by the independent sovereigns of India both Hindu and Mahomedan But the explanation of such State exploitation may be found in the circumstance that in those cases the mines worked by the sovereigns were located in unappropriated or unsettled tracts of the country and thus according to the rule of law on this subject which was adopted in India since the Hindu revival of the Gupta era, the Kings became entitled to the ownership of the mines under the soil

Even in pre historic times Southern India appears to have attracted the attention of man on account of its rich deposits of gold[1]

A late neolithic settlement existed at Maski in the Nizam s dominions where the old gold miners shafts are the deepest in the world The mines probably were still worked in the days of Asoka (240 B C) who recorded one of his edicts on a rock at Maski and had a capital town at Subarnagiri near about[2]

It appears that the gold mines were worked by the people all through the long

1 Manchester Memoirs, Vol 60, part 1 1916 p 20 of reprint.

2 Smith s Oxford History of India, p 8

ages of Indian history and the abundance of the gold coinage of Southern India might be due to this amongst other circumstances.

I have not been able to discover authentic historical record of the working of Southern Indian mines by the sovereigns of the kingdoms of Southern India. Yet I am sure that if research work be carried on in these directions material will come to light to show that the kings of Southern India also adopted the doctrine of theocratic sovereignty with its implications. I have already referred to the characteristic difference in the nature of the interest conveyed by the land-grants of the kings of Southern India showing that in some instances the regalia alone were granted while in others the land itself formed the subject matter of the grant. This certainly shows that the ownership of land got vested in the kings of Southern India sometime after the 4th century A.D.

It is quite possible that mines also at the same time came under the ownership of the sovereigns of the countries of Southern India. It is almost certain that the powerful South Indian kings like the Chalukyas must have appropriated the produce of the mines and the pearl

fisheries It is quite likely also that the Rajas of the kingdom of Vijayanagar owned the mines within their territory

From one historical instance of the ap propriation of mines by an independent sovereign of Southern India in the 18th century I venture to assert that all previous sovereigns did the same and that the statements made above are true Tipu Sultan, son of Hyder Ali worked the mines of gold at Markuppain [1]

This circumstance evidently shows that mines belonged to the State

It is well known that in regard to the administration of the land revenue the Mahomedan rulers of India merely carried on the system they found in existence with some modifications as to details without any change in the funda mentals So that we may justly say that in Mysore the new theory of royal owner ship of mines was adopted long ago and still is the law there for the Kolar gold fields belong to the State of Mysore and are worked by licensees from the State [2]

It is only the precious metals and iron amongst the base ones which the ancients

1 See Rice's History of Mysore

2 See pp 3 [illegible] 57 [illegible] of Tagore Lectures 1[illegible]

seem to have raised from the mines. The vast mineral wealth of India consisting of metals unknown to the ancients have been discovered under the Indian soil, both settled and unappropriated, only in recent years and consequently there has been a rapid growth in the number of working mines of numberless kinds of minerals in India leading to important and difficult questions as to title to the minerals under the soil and the method of work to be employed and also as to sanitary and moral well-being of the miners who work in the mines. The Indian legislature has been very active in recent years and Statutes had been passed for the purposes mentioned above. I desire to take up the subject of the law of minerals in modern India in a subsequent volume

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